The Madras Law Journal

VOL. XXV] SEPTEMBER, 1913. [PART VIII

CRITICAL NOTE.

Srinivasa Iyengar *v.* Secretary of State for India.

(24 Madras Law Journal 41.)

The judgment in *Srinivasa Iyengar* v. *Secretary of State for India*[1] cannot be said to be satisfactory. The only question that arose was expressly left undecided, and the conclusion is based upon cases decided under repealed Acts.

The question that actually arose for decision was on the following facts. A suit was brought to set aside a sale held for arrears of revenue. Admittedly the suit was governed for purposes of limitation by the six months' period prescribed by section 59 of Madras Act II of 1864. The suit was brought after the expiry of six months. The plaintiff however, urged that the suit was not barred by reason of the provisions of section 15 of Act IX of 1908. If the provisions of section 15 be applicable to the suit, then there is no doubt that the suit was instituted in time. The only question therefore was whether the provisions of section 15 were applicable to the suit. To put it still more clearly—the question was whether section 29 of the Act precluded the application of section 15 to the suit.

The learned judges hold that the provisions of section 15 are applicable to the suit, but refuse to consider whether the effect of section 29 is to prevent the application of section 15. The learned judges are of opinion that the whole question turns upon the construction of section 59 of the Revenue Recovery Act. "We are of opinion that if on a construction of Act II of 1864 the conclusion can be arrived at that the period of six months was intended to be subject to the general provision of the Limitation Act, *Abu Bucker Sahib* v. *Secretary of State for India*[2] would not preclude us from giving effect to that conclusion."

It is obvious that the learned judges have altogether misconceived the question that must necessarily be answered before

1. (1912) 24 M. L. J. R. 41. 2. (1911) I. L. R. 34 M. 505.

they arrived at their decision. There is nothing in Madras Act II of 1864 which would help in the answer to the question whether the provisions of the Limitation Act are or are not applicable. Section 59 prescribes the period for certain suits, and is altogether silent as to the application of the provisions of the Limitation Act. It is in the latter act and in that alone, that an answer to the question must be sought for. A consideration of the provisions of the Limitation Act of 1908, leads, I venture to think, to the same conclusion as that arrived at by the judges.

Section 3 of the Act lays down, "subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, ..., after the period of limitation prescribed therefor by the First Schedule shall be dismissed...................".

Section 29 says, "Nothing in this Act shall......................

"(*b*) affect or alter any period of limitation specially prescribed for any suit,............by any special or local law now or hereafter in force in British India.".................".

Madras Act II of 1864 is a local Act, prescribing the period for the suit in question. The plaintiff does not want anything in the Limitation Act "to affect or alter" this period. He merely states that the *computation* of that period must be done in a particular way. Sections 12 to 25 deal with "computation of period of limitation", and the plaintiff relies on Section 15, which is one of such sections, for the method of computation he wants the court to adopt. The period prescribed will remain just the same, however it may be computed.

The history of legislation in regard to limitation of suits &c., also points out that section 15 is well applicable to the suit in question. The corresponding provision in Act XIV of 1859 was contained in section 3. It runs as follows. "When, by any law now or hereafter in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter limitation shall be applied *notwithstanding this Act.*"

In Act IX of 1871, section 6 stated,—

"When, by any law not mentioned in the schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is especially prescribed for any suits,............*nothing herein contained* shall affect such law."

In Act XV of 1877, section 6 stated,—

"When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit,..................*nothing herein contained* shall affect or alter the period so prescribed."

Around these sections had clustered numerous decisions of all the High Courts in British India laying down that the general provisions of the Limitation Act are applicable to suits the period of limitation for which is prescribed by any local or special law. It is almost impossible to think that the Legislature contemplated by the light verbal and (if I may say so) typographical alterations made in the wording in Act IX of 1908 to reverse the long uniform course of judicial decisions of all the highest courts in British India. As their Lordships of the Privy Council say in the well-known case of *Vasudeva Mudaliar* v. *Srinivasa Pillai*[1]. "The narrower construction escapes the necessity of attributing to the Legislature a great and sudden change of policy. It also gives effect to the ordinary presumption that the Legislature when it repeats *in substance* in a later Act an earlier enactment, that has obtained a settled meaning by judicial construction, intends the words to mean what they meant before." (The italics are mine).

The learned judges were also pressed to adopt the reasoning in the Full Bench of *Abu Bucker Sahib* v. *Secretary of State for India*[2] and it was apparently thought that decision went against the plaintiff. The facts and the actual decision in *Abu Bucker's case*[2] are briefly as follow. Appeals under the Forest Act are to be preferred within thirty days of the decision or order appealed against. An appeal was filed after the expiry of 30 days, and was sought to be maintained on the ground that the time spent for obtaining a copy of the order appealed against should be excluded, as provided under section 12 of the Limitation Act of 1877. The question whether section 12 might be applied was referred to a Full Bench. The learned Chief Justice held that section 12 was not applicable and stated three reasons for holding so. They are:— (1). The right to extend the time for appeal was expressly given in the Forest Act to the Governor in Council, and that fact showed that "the legislature intended that the general provisions of the law requiring the courts to extend the period of limitation in certain cases should have no application to appeals under section 10 of the Act in question". (2). The effect of section 6 of the

1. (1907) I. L. R. 30 M. 426. 2. (1911) I. L. R. 34 M. 505.

Limitation Act was to exclude the application of section 12 of the Act. (3). The Forest Act which gave the right of appeal did not require that the notice of appeal should be accompanied by a copy of the order appealed against. *Wallis* J. who was "of the same opinion" and *Miller* J. who "agreed", have also made short observations regarding sections 6 and 12 of the Limitation Act. When more than one reason is given to support a conclusion, and any one reason is enough to support it, it is not a necessary inference, that the *pros* and *cons* in reference to each of the reasons are fully considered. It is especially so in the case under discussion, as the learned Chief Justice begins by saying that his conclusion "might reasonably be based on the short ground" mentioned above as the first ground. The other two grounds are superfluous, though they might afford a basis for a larger amount of self-satisfaction. The learned judges *Benson* and *Sundara Aiyar* JJ. themselves distinguish the case on the ground *inter alia,* that the Full Bench decision does not notice the several prior decisions of the Madras High Court.

It may not, perhaps, be improper to raise a question that was not raised in the case. The period of six months prescribed for the suit expired on 31st December 1908, and if there was a court of competent jurisdiction sitting that day, the suit if not instituted that day would altogether be barred. The courts however were closed on the last day of the period, and the suit could be instituted on the first court day thereafter. This could be done, not necessarily because section 5 of Act XV of 1877 or section 4 of Act IX of 1908 permits it. Section 10 of Act X of 1897 (General Clauses Act) permits the filing of the suit on the next court day. If then the period prescribed for the suit expires before Act IX of 1908 came into force, can a suit instituted subsequent to its coming into force, not because it is governed by it, but because of an accident, attract the new provisions of the new Act ?

N. SUNDARARAJA AIYENGAR.

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THE LAW RELATING TO THE SUCCESSION OF A DEGRADED HINDU.

The law as regards the succession to a degraded Hindu is in a somewhat confused state and the cases on the subject can hardly be regarded as satisfactory. A person notwithstanding his degradation does not cease to be a Hindu and as such the law applicable to him is the Hindu Law or usage governing that class. He is certainly not governed by the Indian Succession Act. See *Sarnamoyee Bewa* v. *The Secretary of State*[1]. There are two views regarding the effect of degradation : firstly, that it has the effect of severing the connection of undegraded members and his or her undegraded relations ; secondly that it has not that effect. *Taramunnee Dassee* v. *Mutee Buneanee*[2] seems to be the earliest authority and the decision in this case appears to be the basis for the statement that degradation has the effect of severing the relationship of a degraded person from his or her relations. The decision, however, is no authority for any such proposition and in fact the actual facts in the case do not raise any question as to the effect of degradation. The facts are these. One Konal Monni Dassee lived as a prostitute and purchased property. She died leaving three daughters one of whom married and had sons who claimed to be heirs of their grandmother and the other two lived with their mother leading lives similar to that of their mother. The married daughter herself did not claim the property but her sons claimed the estate. If the question had arisen between the married daughter and the prostitute daughters then the decision might be regarded as an authority bearing upon questions relating to the succession of a degraded woman. It would seem difficult to say what was the law applied in this case. If it was the Hindu Law, was it the Hindu Law of Stridhanam of the Bengal School? Nothing, however, appears from the judgment. All that appears from the Report is that the Principal Sudder Amin differing from the Munsif held that the deceased was an outcaste of the family but referred the question of

1. (1897) I. L. R. 25 C. 254 at 258. 2. (1846) S. D. A. 207

heirship to the Zillah Pandit who gave it as his opinion that the prostitute daughters should succeed to their prostitute mother. The Sudder Amin accordingly reversed the decision of the Munsif. The Sudder Dewani Adalat admitted a special appeal. The Sudder judge put the following question to the Pandit of the Sudder Court: "Of the three daughters of the outcaste mother one of whom is married and respectable and other two prostitutes, who will inherit the mother's property?" The reply of the Pandit was that the two prostitute daughters will inherit and added as his reason that the relationships of the married and respectable daughter to the outcaste had been severed. It does not appear from the report whether the married daughter was a legitimate daughter of the woman. The decision in the case can hardly be regarded as satisfactory.

It seems to be regarded as settled law that a Hindu woman leading a prostitute or an unchaste life and has became degraded is governed by Hindu Law. (See *Narain Das* v. *Tirlok Tiwari*[1], *Subbaraya Pillai* v. *Ramasami Pillai*[2], *Sarna Moyee Bewa* v. *Secretary of State*[3], *Sundari Dosse* v. *Nemye Charan Daw*[4], *Hari Lal Singh* v. *Tripura Charan*[5]). Considering the case of a degraded woman first, there seems to be some doubt about the character of the property acquired by such woman. The Madras High Court in *Sivasangu* v. *Minal*[6] seem to have held that it would not be Stridhanam but ordinary property. The learned judges there observed: "A prostitute is certainly *not* a maiden within the meaning of the rule applicable to the sister's fee. Nor can property acquired by her with funds earned by prostitution be treated as stridhanam or property given to a woman who contracts an *asura* marriage or a legal marriage though in one of the forms prescribed by the law. A legal marriage and the character of the property as stridhanam are the pre-requisites of the rule of succession mentioned by the Subordinate Judge. The decision of the High Court in the *Sivaganga case*[6] which was confirmed by Her Majesty in Council is clearly against the view that all property vested in a woman, however acquired, is her stridhanam governed by the special rules of succession prescribed by the Mitakshara in regard to woman's peculiar property. We are of opinion that the property left by Kuppayi must be treated as ordinary Hindu property, if the Hindu law regulated its devolution. The rule of law applicable to the children of a prostitute mother

1. (1906) I. L. R. 29 A. 4. 2. (1899) I.L.R. 23 M. 171 at pp. 177 & 178.
3. (1897) I.L.R. 25 C. 254 at 258. 4. (1907) 6 C. L. J. 372.
5. (1913) 17 C. L. J. 438 (448). 6. (1889) I. L. R. 12. M. 277.

who have elected to retain Hindu usage is that of Hindu Law as laid down in the decision of the Privy Council in *Myna Boyee* v *Ootaram*[1]. We are, however, not inclined to apply this rule at once." The learned judges, thereupon, directed the Sub-judge to make the brother of the deceased a party and to submit a finding on the following issue,among others whether the rule *viz.*of succession applicable to ordinary Hindu property was applicable to the property left by the deceased degraded woman. The Subordinate Judge held upon this issue that though the property acquired by a woman by prostitution might fall under the category of presents of earning by skill or mechanical arts the deceased woman was neither a maiden nor a married woman nor a widow, that the text of Katyayana of presents from strangers or earning by labor, skill etc.,would only cover cases of acquisitions made by a female under coverture and that there was no provision at all in the text books regarding the property acquired by a female through prostitution except a statement of Strange in his Manual of Hindu Law para 66. He, therefore, answered the question in the negative and held that the rule of succession applicable to ordinary Hindu property was not applicable. It is, however, difficult to say what the rule of succession to ordinary Hindu property is where the property is acquired by a woman who is undegraded if by ordinary Hindu property the learned judges make a differentiation between stridhanam and other kinds of property which a woman may hold absolutely. In Calcutta, however, there is authority for the view that such property may be regarded as Stridhanam. In *Tripuracharan Banerjee* v. *Harimati Dassi*[2] *Stephen* J. observed: "The facts seem to me to point strongly to the conclusion that the property in question represented the earnings of a prostitute but it is not necessary that I should hold more than that it was the absolute property of a prostitute at the time of her death. If this is so the view I have expressed seems to me consistent with the rules laid down in the Dayabhaga Chapter IV Section 1 as to what is the separate property of a woman. Paragraphs 1 to 4 describe six modes in which a woman may acquire separate property, none of which seem to apply to acquisition by a prostitute as it would be doing violence to the text to suppose that the wages of prostitution could be described as 'what has been conferred on the woman through affection'. But these modes of acquisition do not exclude others as is shown by the very plain language of paragraph 18 which concludes 'that alone is *Stridhan* which she has power to give, sell or use, independently of

1. (1861) 8 M. I. A. 400. 2. (1911) I. L. R. 38. C. 493 at p. 496.

her husbands's control.' But the defendant argues that all the rules presuppose that a woman has a husband, that *Stridhan* is not limited to some kinds of property, but is limited by the status of the woman, and that the status must be that of a married woman. To this I think that the answer is to be found in a passage of Sir Guru Dass Banerjee's work already referred to at p. 389, where he points out that the succession to dancing girls is not a subject with which Hindu Law cared to concern itself, but that the modern codes of the country cannot act in the same way, which seems to me to show that though property held absolutely by a prostitute may not be *Stridhan* in the exact contemplation of the Dayabhaga, the operation of which is confined to married woman, modern Courts must treat it as though it was stridhan for purposes of succession." The above case was followed by a Full Bench of the Calcutta High Court in the recent case of *Hari Lal Singh* v. *Tripura Charan Roy*[1] and the Madras High Court in *Narumayya Chetty* v. *Tiruvangadathan Chetty*[2] apparently proceeded on the assumption that the gains of prostitution would be stridhanam.

Apart from this conflict as to the nature of property there is a further conflict as already stated as to the effect of degradation. The Madras and the Allahabad High Courts hold that degradation does not put an end to relationship. See *Narain Das* v. *Tirlok Tiwari*[3], *Subbaraya Pillai* v. *Ramasami Pillai*[4]. The Madras decisions seem to enunciate a further principle judging from the *dicta* in some of the cases that as between degraded and undegraded relations of a woman the degraded relations would have preference. This principle can hardly be regarded as satisfactory. If that principle be accepted the law punishes a person for leading a chaste life by excluding him and puts a premium on immorality by allowing persons leading an immoral life to take to the exclusion of those leading honest lives. We can hardly regard a system of jurisprudence which founds a preference on immorality as rational and we cannot conceive that there is anything in Hindu Law to countenance any such proposition. None is to be found in the texts of the Sages or in the words of the commentators. It is, therefore, necessary to see whether the cases really countenance any such proposition. The case of *SivaSangu* v. *Minal*[5] already referred to can hardly be regarded as a satisfactory decision. In the judgment calling for the finding no trace is to be found of any expression in support of the principle. On the finding it will be remem-

1. (1913) 17 C. L. J. 438 (448) 2. (1912) 24. M. L. J. R. 223.
3. (1906) I. L. R. 29 A. 4. 4. (1899) I.L.R. 23 M. 171 at pp. 177 & 178.
5. (1889) I. L. R. 12 M. 277.

bered that the Subordinate Judge held that the rule of succession applicable to ordinary Hindu property was not applicable but he added that the succession in the first instance would devolve not on the relations that remain undegraded in caste but on those of deceased's heirs after degradation or who were her associates in the degradation. There was a fourth issue remitted for finding viz., whether according to the usage of the caste to which the party belonged or otherwise there was a rule of preference in favor of the sister who was an associate with the deceased in her degraded condition. On this issue the Subordinate judge held that the sister was the preferential heir. Whether the Subordinate Judge decided it on the question of usage does not appear. The learned judges upheld the decision first upon the principle laid down in *Taramannee's case*[1] and secondly upon the analogy between the legal relation of two prostitute sisters living together in their degraded condition and that of their two brothers living in co-parcenary. The decision in *Taramani's case* has already been referred to. We fail to see any analogy between brothers living in co-parcenery and sisters living together in prostitution. In the case of brothers living in co-parcenary and governed by Mitakshara law the law lays down the rule of survivorship. In the case of sisters leading respectable lives living together no question of survivorship arises. No such question can arise in the case of sisters living together but leading lives not countenanced by law and stamped by law as immoral. The only question is one of succession and this question *viz.*, whether a sister or a brother can ever be a heir to their deceased sister has hardly been considered in this case. In the case of *Narasannah* v. *Ganju*[2] the parties were dancing girls and we do not desire now to consider the question as to the peculiar law applicable to them. In *Subbaroya Pillai* v. *Ramasami Pillai*[3] already referred to the learned judges made a statement which was not necessary for the decision. They observed[3] "We think that the decition itselfs when there is a competition between a degraded person and an undegraded person to the property of a degraded person the degraded person has the preferential right may be supported on equitable principles referred to above." The equitable principles referred to in a prior portion are stated by their Lordships as follows at p. 177: "As to the Hindu Law itself that does not, so far as we are aware, prescribe any special rule of succession to the property of an outcaste; nor does it expressly assert or deny the right of an undegraded person to succeed to the property of a degraded to whom the former might have been unquestionably the

1. (1846) S. D. A. 297. 2. (1889) I. L. R. 13 M. 133.
3. (1889) I. L. R. 23 M. 171. (178).

heir but for the degradation of the latter. In these circumstances where there is no usage regulating the devolution of the property of a degraded person who is within the pale of Hinduism as in the case of dancing girls, the only rules of inheritance that the courts can with propriety fall back upon are those of Hindu Law. And in applying so much thereof as without incongruity could be applied either with reference to those connected with the degraded person after his degradation or in the absence of those remaining undegraded the courts would at all events be administering those rules as rules of equity and good conscience which are guides in cases not otherwise provided for."

(*To be continued*).

THE MODES OF PARTITION AND THE RECENT PRIVY COUNCIL CASE.

We are glad to observe that the Privy Council in *Pandit Suraj Narain* v. *Pandit Ikbal Narain*[1] has taken a sound and progressive view of the Hindu Law relating to partition. Mr. Syed Ameer Ali delivering the judgment of the Judicial committee says: "A definite and unambiguous indication by one member of intention to separate himself and enjoy his share in severalty may amount to separation and he proceeds to lay down that to have that effect the intention must be unequivocally and unambiguously expressed. Till the decision of the Privy Council, the prevalent doctrine undoubtedly has been that in order to effect a separation in status there must be an agreement express or implied between all the co-parceners. This doctrine has especially in Madras been treated by learned judges as a legal fetish and the ridiculous length to which it logically led was illustrated in the case reported in *Appa Pillai* v. *Ranga Pillai*[2]. A member of an undivided family could not in the most solemn manner renounce his status in the joint family unless all the other members acquiesced in such renunciation and gave him "some trifle" out of the family property. The major premise was that every separation could only be effected by a valid agreement or contract. The minor premise was that every contract requires consideration. The conclusion was irresistible that there could be no separation of one member by renunciation pure and simple without consideration for such acts. And a man who had by registered document renounced his rights was held entitled to sue for partition. See *Appa Pillai* v. *Ranga Pillai*[2]. No less a judge than the late Sir *V. Bashyam Iyengar* in a judgment (see *Sudarsana Maistri* v.

1. (1912) I. L. R. 35 A. 80. 2. (1882) I. L. R. 6 M. 71.

Narasimhalu Maistri[1]) which dazzled the legal world of his day said that a renunciation must be followed by acquiescence by the other members and must be manifested by his taking some trifle out of the family property. The learned judge also differed from the opinion of *Garth* C. J. in *Radhachurn Doss* v. *Kripa Sindu Doss*[2] "that a mere declaration by one member that he was separate from the others, would seem to be sufficient to effect the separation." The stricter view has arisen from a confusion of ideas and a failure to distinguish separation in status from a partition amongst the co-parceners. The rules which were laid down for a division were made applicable equally to a separation in interest. Further passages in the books which were concerned with the Hindu lawyer's notions of evidence by which a partition may be held proved were confounded with the substantive elements required to effect a partition. The rule as to the giving of some trifle was only a rule of evidentiary value.

We cannot help thinking that the view taken by *Chief Justice Garth* is the sound and logical one that is conducive to the best interests of Hindu Society. It is clear that a Hindu co-parcener can enforce a division even against the will of others by suit. The court has no discretion in the case of adult co-parceners and must give him a decree. It is equally clear that while one may wish to be separated from the family others might wish to continue joint. It is the demand for a separation that is really the determining feature and not the compliance therewith by the other members. A man's own status as a separated or unseparated member ought to depend upon his expressed volition and not on the volition of others. The view that an unequivocal, express, unilateral declaration of his intention to treat himself as a separated member is sufficient avoids all anomalies and difficulties especially in regard to the time from which the cessation of the co-parcenery is to take effect. In as much as a co-parcener is entitled as of right to effect a separation, the Calcutta view now affirmed by the Privy Council that an unequivocal act by a co-parcener showing his intention to hold his shares separately effects a separation is perfectly sound and logical. [See 4 C. 425; 3 W. R. C. R. 41; 8 W. R. 82; 14 W. R. 339, 346; 25 W. R. C. R. 355.] We hope the Indian High Courts will in future give effect to this view instead of attempting to whittle it away.

S. SRINIVASA IYENGAR B.A. B.L.,
High Court Vakil.

1. (1901) I. L. R. 25 M. 149.
2. (1879) I. L. R. 5 C. 474.

NOTES OF INDIAN CASES.

Kanhaya Lal v. The National Bank of India.—25 M.L.J. 104.—Lord Moulton both in the Court of Appeal and in the Privy Council has been remarkable for his freedom from legal shibboleths. It is refreshing to notice the way in which he brushed aside the quibbling upon the meaning of the word "coercion" in S. 72 of the Indian Contract Act. The decision of the Privy Council in the above case is to the effect that a payment is not voluntary but is made under coercion even though the circumstances do not satisfy the definition of that word as defined in S. 15 of the Indian Contract Act. We cannot imagine how the Chief Court of the Punjab came to hold that when an owner of property attached by a decree holder as belonging to his judgment-debtor pays off the decree amount under protest, the payment is voluntary and no action to recover the same would lie. A somewhat similar view used to find favour with Mr. Justice *Shephard* (*Muthayya Chetti* v. *Secretary of State for India*[1]), though happily that view has since been exploded even in Madras. While Lord Moulton has all Lord Macnaughten's boldness and vigour, his judgments have in addition a convincing quality based as they are upon a sound exposition of legal principles and appealing as they do to the best legal instincts.

S. S.

Anant Das v. Udai Bhan Pargas:—I. L. R. 35 A. 187.—In this case there were several claimants to a certain mutt. Plaintiff brought a suit as against one claimant. On the same day he instituted another suit against the same person and another claimant. There was a single judgment though separate decrees were drawn in each case by which the plaintiff's claim was upheld. Appeals were filed in both the suits. In the second suit only one appealed i. e. the one other than the party to the first suit appealed. He died and his appeal abated. It was held by the Allahabad High Court in the other appeal that the judgment in the suit wherein the appeal abated was *res judicata*. Of course after the decision of the Full Bench of the Allahabad High Court in *Zaharia* v. *Debia*[2] the learned judges in this case could come to no other conclusion. It is, however, well to note that the decisions of the Calcutta and Bombay High Courts are different although no case was decided after the passing of the new Civil Procedure Code. The learned judges in this case seem also to rely upon Explanation 1 to S. 11 but we cannot see how that will cover the facts of the case under notice. It is a question also whether where

1. (1898) I. L R. 22 M. 100. 2. (1910) I. L. R. 33 A. 51.

an appeal abates the judgment in the suit has the effect stated in their Lordships' judgment. The effect of an abatement is stated in O. 22 r. 9. That relates to a suit. According to that rule no fresh suit can be brought on the same cause of action. Taking suit to mean an appeal according to O. 22 r. 11 the effect of the abatement of an appeal is to prevent a fresh appeal from being brought. That does not mean that an appeal already filed cannot be heard. However the question is open in other courts.

Dalip Singh *v.* **Kundan Lal**:—I. L. R. 35 A. 207.—It is surprising to notice that there has been no reported decision of the other High Courts upon the question raised in this case. The Allahabad High Court following an earlier case has held that a father cannot revive a time barred debt so as to bind the sons. No reasons are stated by the learned judges in this case. If we turn to the decision in *Indar Singh* v. *Sargu Singh*[1] we find the learned judges giving the following reasons for their judgment: "At the same time the fact remains that if the creditor had tried to sue for the debt at the time that the mortgage was entered into, or if the father had executed a mortgage on the basis of an acknowledgment of such time barred debt, the debt could not have been recovered or the mortgage lien enforced, in our courts." It is, however, difficult to see how the learned judges arrived at the conclusion that "if the father had executed a mortgage on the basis of an acknowledgment of such time barred-debt the debt would not have been recovered or the mortgage lien enforced.

We are afraid that the learned judges have not borne in mind the provision of clause 3 of S. 25 of the Contract Act which distinctly says that a promise to pay a time barred debt is a contract. A mortgage by which a father secures the joint or ancestral property for a debt which may have been barred at the time is enforceable. The father promises to pay the debt and as security gives the joint or ancestral property. S. 25 cl. 3 will therefore apply. It must also be remembered that a debt barred by limitation is not extinguished. Then there is also another fact to be borne in mind and that it is the pious duty of the son to discharge the father's debts and where the father promises to pay a barred debt such promise is enforceable against him and he is bound to pay it. There is a promise enforceable against the father and the son is bound by reason of his pious obligation to discharge the debt. We find from the report of the very same case in *The Allahabad Law*

1. (1911) 8 A. L. J. 1099.

Journal[1] that this argument was addressed on behalf of the appellant. But we find no notice of it in the judgment. Of course if according to their Lordships the father himself is not liable the argument can have no weight. The case of *Narayanasami Chetti* v. *Samidas Mudali*[2] noticed by the Allahabad High Court is an authority for the view that a promissory note executed by the father in respect of a debt which by a judgment of Court was held to be barred by limitation was a good debt which a son was bound to pay.

SUMMARY OF ENGLISH CASES.

Stubbs Ltd. *v.* Russel : [1913] A. C. 386 (Sc.)

Defamation—Erroneous statement—Imputation of Insolvency.

A statement in a trade journal mistakenly made, that a small cause decree was obtained against a trader in his absence is by itself not libellous ; and the case is not one to be left to a jury ; still less could it be libellous when the statement is headed by an explanation that such a statement of persons against whom such decrees were obtained does in no way imply inability to pay on the part of the person or persons named and that some of the decrees mentioned therein might have been paid or settled by the person or persons concerned. As all possible suggestion of insolvency was negatived by the explanation the case was not one which ought to be left to go before a jury even with an *innuendo* as to insolvency.

Scott *v.* Scott : [1913] A. C. 417. (E).

Divorce Proceedings—Order to hold in Camera—Jurisdiction to—Publication of such proceedings—No contempt of Court—Order punishing contempt—Appealability of, not being made in a criminal cause or matter.

The Probate, Divorce and Admiralty Court of England has no jurisdiction to order that proceedings in any case therein shall be held in *Camera*. Consequently publication of the proceedings is no contempt of court. An order punishing a party as for such contempt is not one made in a criminal cause or matter and is therefore appealable.

One of the cardinal rules of administration of Justice in English Courts is the due observance of publicity in regard to those proceedings and the only three exceptions to this rule are (1) cases of

1. (1913) 11 A. L. J. 1124. 2. (1883) I. L. R. 6 M 293.

infants (2) cases of Lunatics and (3) cases where secrecy as for instance, secrecy of a process of manufacture or discovery or invention—trade secrets—is of the essence of the cause. The first two are really no exceptions at all, the jurisdiction exercised over wards and lunatics being parental and domestic, involving private affairs and thus being more administrative than judicial. The third case is really an exception being founded upon necessity.

Per Lords *Haldane and Loreburn.* The general rule as to publicity must yield to the paramount duty of the court to see that justice is done and in cases where it is clearly proved that justice cannot be had unless the proceedings be held in *camera* a judge may order that proceedings may be had in *camera*; but to obtain such an order necessity in the particular case must clearly be shown.

In re **Whitting: Ormond** *v.* **De Lannay**: [1913] 2 Ch. 1.

Will—Construction—Grant to 46 people of residuary estate—Revocation as to two—Effect of—Precedents—On question of construction, not binding—Mischief of.

A testator gave his residuary estate to forty-six named persons to be distributed equally among them. By a subsequent codicil, he revoked the gift to two out of the forty-six but in all other respects he confirmed the will. The gift was not a gift to a class.

Held, nevertheless, that there was no intestacy as regards the shares of the two whose legacies had been revoked and the estate was to be distributed among the remaining people.

His Lordship Mr. Justice Joyce refused to follow the cases cited in support of the contrary view. When he was clear himself, on a question of construction he was not bound to follow precedents. As observed by *Jessel* M. R. in *Hack* v. *London Provident Building Society*[1] on a question of construction, even the decision of the court of appeal is not binding and that even if the words are identical.

His Lordship dwells on the mischief done by referring to authorities for the construction of documents. (See the observations of *Jessel* M. R. in *Aspoen* v. *Sedden*[2] and of *Lindley* L. J. in *In re Palmer*[3] which his Lordship cites).

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1. (1883) 23 Ch. D. 103, 111.
2. (1895) 3 Ch. 369.
3. (1875) L. R. 10 Ch. 394, 397.

Grierson *v.* National Provincial Bank of England, Ltd.:
[1913] 2 Ch. 18.

Mortgage—Priority—Notice by second mortgagee—Not essential—Failure to give, not negligence.

There was a first equitable mortgage by deposit of title deeds; then a second legal mortgage. The second mortgagee did not give notice of his mortgage to the first though he was aware of it his mortgage being expressly subject to it. Subsequently, the mortgagor paid off the first mortgage, secured the title deeds, and took money from a Bank depositing them as security. The Bank claimed priority contending that the second mortgagee was guilty of negligence. But Justice Joyce held that the facts did not disclose any negligence on the part of the second mortgagee. He was not bound to give notice of his mortgage to the first mortgagee. Though it is usual to do so, there was no duty cast upon him to do so.

In re **Pacific Coast Syndicate, Ltd.,** [1913] 2 Ch. 26.

Company—Winding up—Liquidator—Costs of—Costs of defendant in action by—Priority between.

When an action is brought by the liquidator after the commencement of a winding up action, and the action is dismissed with costs of the defendant, the defendant is entitled to be paid his costs out of the assets of the company in priority to the liquidator in respect of his costs in the winding up. This is the rule whether the order in the action is merely for costs, or costs to be paid out of the assets of the company or costs to be paid by the liquidator with liberty to recoup himself out of the assets.

In re **Birkbeck Permanent Benefit Building Society Official Receiver *v.* The License Insurance Corporation:**
[1913] 2 Ch. 34.

Alienation—Clause against—Exemption in favour of involuntary alienations—Extends to alienations by assignee by operation of law, when under obligation to convey—Construction.

The mortgagees of certain leasehold premises effected a policy insuring the payment of the mortgage. The policy contained a provision that it was to cease to be in force if the whole or any part of the interest of the insured in the mortgaged property should pass

from the insured otherwise than by will or by operatien of law unless notice thereof in writing was given to the corporation and the insurance was declared to be continued to a successor by a memorandum in the policy. The mortgagees were the trustees of a company. The company was ordered to be wound up by the court and the liquidator wanted to transfer the mortgage debt but the insurer said that he could not transfer without their consent and they would not consent. But *Neville* J. held, on the construction of the policy that the insurers were bound on notice to endorse the policy in favour of any assignee. He also held that the exemption in favour of assignees by operation of law saved also assignments by such assignees when they were persons who were bound under the law to assign it to somebody else and as such the liquidator's assignment did not need to be with the consent of the insurers.

In re **Whitehead : Whitehead** *v.* **Street** : [1913] 2 Ch. 56.

Will—Legacy on condition of releasing right in favour of third party—No priority for the legacy.

A testator gave a legacy on condition of the legatee releasing her life estate in some fund which was ultimately to go to a charity under a settlement by the testator. The question was whether the legatee was entitled to priority over other legatees or was only to rank *pari passu* with them. The rule is that a legatee is entitled to priority where the condition is the release of a debt or claim against the estate. *Farwell* L.J. (sitting as an additional Judge of the Chancery Division) declined to extend the priority to a case like the present where the advantage was to go not to the testator's estate but to a third party.

Gee *v.* **Liddell**: [1913] 2 Ch. 62.

Mortgage—Co-owners mortgaging—First mortgagee of one co-owner—Foreclosure action by—Other co-owners not made parties—Effect of.

Where three people each entitled to a third share in certain property executed a mortgage for a consolidated sum, *inter se* each being bound to pay only a definite portion of it, *held*: that a first mortgagee of the share of one was bound to make the other two mortgagees parties to his action for foreclosure or else he would lose his priority in respect of his debt and the only claim he could make on account of his foreclosure decree would be to the balance

remaining after the satisfaction of the quota due in respect of the *second* mortgage.

Stampford, Spaloing and Boston Banking Company v. Keeble: [1913] 2 Ch. 96.

In this case the mortgagees of a certain land applied to the Court to grant sanction to a mining lease proposed to be granted by the receiver appointed in their foreclosure action. *Sargant* J. held that it was not competent to the Court to sanction such a lease.

Attorney General v. Horner: [1913] 2 Ch. 140. (C. A.)

Presumption of lost grant—Origin known—Mistaken Assertion of title under grant—Effect of—Maps—Admissibility of—Dedication—Reservation of right to obstruct in future—Not competent—Easement—Benefit of dominant tenement, meaning of.

The Judgments in this case chiefly of *Buckley* and *Hamilton* L. JJ. contain a luminous exposition of the doctrine of lost grant, its scope and limitations.

The facts in this case were, that the defendant had a franchise of market under a Charter of Charles II on two of the week days but the defendant asserting that he had a right under the Charter to hold market on all the week days, had been for a long time collecting tolls. The market used to be held not only in his own land but also on the adjoining roads &c.

In an action by the Attorney General to restrain the defendant from holding the market on days other than those allowed by the Charter, the defendant asked the Court to presume a legal origin for his right to hold the market and collect tolls on days other than those permitted by the charter. As regards the obstruction of the highway, he asked the court to presume a qualified dedication *i e.*, a dedication subject to a right to obstruct the highway, if any portion of the land belonged to himself and his predecessor in title, and as far as the land belonged to others an easement in his and his licensees' favour to obstruct the highway.

Their Lordships refused to draw any such inference of legal origin.

So far as the right to collect tolls went, that could be justified only on a royal grant and their Lordships felt bound by the previous decision in 14 Q. B. D. 245 and unable to draw the inference of a lost Charter.

As regards the right to obstruct the streets, when the right to hold market was negatived, what remained was only a right to obstruct the highway. Their Lordships held that for several reasons they could not presume a legal origin for it.

First the right which he was asserting was a right of market, when that was negatived an incidental portion of the right, the right to obstruct the streets could not be established on the mere ground of usage.

In the second place, the right was being asserted as one derived from a charter and when the charter is found not to confer the right it was not open to the defendant to rely upon lost grant. As *Buckley* L. J. put it "A man cannot prescribe contrary to and in a manner inconsistent with the title which he produces and on which he relies. If his enjoyment originated in a mistake and he asserted the right to be grounded, say on an award which did not support it, then however adversely the right may have been exercised, it cannot for purposes of the presumption be referred to any other ground than what he himself insisted on at the time." Or as *Cozens Hardy* M. R. put it "the presumption is often made, although in truth nobody believes that the lost grant was in fact executed. But it is a wholly different proposition to assert that the court must disregard known facts and must deliberately shut its eyes to everything except the usage."

The right asserted was also one that was incapable of having a legal origin. There may be a dedication subject to an actual existing physical obstruction; it cannot be made subject to a future right to obstruct. Nor could the argument as to its being an easement be supported as the overflow of the market could not be considered as a benefit to the dominant tenement as such. Such a right would be a right connected not with the land but with the business on the land and the right claimed would be merely a license that would make an entry lawful which would otherwise be unlawful.

There was a further argument in the case that an injunction ought not to be granted as the wrong done was beneficial to a large section of the public. Their Lordships dismissed that contention holding that that was a matter for the Attorney General who took action or for the legislature and not for the courts to consider.

Although hearsay evidence of reputation is admissible to prove a public right of highway the preliminary fact that there is a way cannot be proved by hearsay.

Acting on this principle, their Lordships refused to admit in this case two maps produced from the British Museum to show the physical delineation of the property at the time the market was granted, and whether a way existed at the time, without some more proof then their mere production as to the competency of the draughtsman &c.

Maps do not become public documents by the mere fact that they come out of the custody of the Guildhall Librarian or the British Museum Librarian. These facts in themselves do not make them public documents, as documents belonging to one of the departments of the State would be.

In re Raggi: Brass *v.* H. Young & Co. Limited: [1913] 2 Ch. 205.

Will—Direction to sell real and personal estate and to pay creditors—Charge on realty—Debts a charge to the full—Not merely for a proportionate part—Limitation.

Where a testator devised his real and personal estate to trustees for sale and for payment out of the proceeds of the debts of the testator;

Held that the creditors had a charge on the real estate and the fact that the direction to sell extends also to his personal estate does not make only a proportionate part of the debts chargeable on the realty. The creditors can recover the whole of their claim from the realty within 12 years of the death of the testator which is the time allowed for the realisation of the charge.

Amber Size and Chemical Company, Limited *v.* Menzel: [1913] 2 Ch. 239.

Master and servant—Trade secret—Confidential employment—Implied obligation—Injunction to restrain improper use—In general terms—Details of the process, not known.

The court will restrain an ex-servant from publishing or divulging that which has been communicated to him in confidence or under a contract by him, express or implied, not to do so and generally from making an improper use of information obtained in the

course of confidential employment and further from using to his late master's detriment information and knowledge surreptitiously obtained from him during his, the servant's employment.

In applying these principles, four questions of fact arise:—

First, did the plaintiffs in fact possess and exercise a secret process ?

Secondly, did the defendant during the course of employment know that the process was a secret process ?

Thirdly, did the defendant acquire knowledge during his employment of that secret or a material part thereof.

Fourthly, has he since leaving the plaintiff's employ made an improper use of the knowledge so acquired by him ?

The Court will grant the injunction when it is satisfied that there is a secret process and that the defendant is using information with respect to it which he got in the course of confidential employment to improper purposes though it does not know the details of the process which it might become necessary to know before the defendant is punished for disobedience of the order.

JOTTINGS AND CUTTINGS.

The Imperial Court of Appeal.—The expectation that the Appellate Jurisdiction Bill would be passed before the close of the Session has, happily, been fulfilled. In the House of Commons attempts were made to reduce the salaries of the additional Lords of Appeal from 6,000*l.* to 5,000*l.*, to restrict the increase in the strength of the Judicial Committee to the appointment of only one Lord of Appeal, instead of two, to provide that only retired judges or judges entitled to retire should be eligible for the new Lordships of Appeal and that the amount of their pensions should be deducted from their salaries as Lords of Appeal, and to limit the selection of the new Law Lords to qualified lawyers under fifty-five years of age. All these frivolous amendments—frivolous, that is, in view of the promise made by the Government at the Imperial Conference—obtained very little support in the Lower Chamber, and the Bill has now been passed by both Houses. We could have wished that a Colonial judge of acknowledged eminence was to be one of the new Law Lords. The appointment of a distinguished Colonial lawyer as a permanent member of the Supreme Court of Appeal would have strengthened considerably its Imperial character. But the Government have, it appears, decided that the selection of

the additional Lords of Appeal shall be limited to British judges. We can only hope that, recognising the preliminary nature of the present Bill, they will proceed next Session to carry out the larger scheme of amalgamating the House of Lords and the Judicial Committee, in name as well as in practise, into one supreme Imperial tribunal.—*Law Journal.*

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Homicide's Right to a Legacy.—The well-known rule that a murderer can take no benefit from his crime has recently been applied to the lesser felony of manslaughter by the president of the Probate, Divorce and Admiralty Division in *Hall* v. *Knight* and *Baxter*. The second defendant, Jennie Baxter, was convicted at the Old Bailey early this year and sentenced to three years' penal servitude on a charge of manslaughter; her victim was the testator whose will was before the Probate Court. In that will he had left her benefits amounting to 10,000*l.* in all. A series of cases has established the rule that a felon who is executed for his offence can derive no benefit from either the crime or the execution which follows it. He can derive no benefit from the crime—*i.e.*, if the death of his victim gives him a legal right to the latter's property he, and his legal personal representative, lose that right (*Crippen's Case* [1911]). He can derive no benefit from the execution which follows his crime—*i.e.*, if he has insured against death by suicide or by the hands of justice, and commits a crime for which he suffers death, the insurance is void on grounds of public policy (*Fauntleroy's Case*, 4 Bligh, N.S.). In this last case, we may note, the capital felony for which the assured suffered the extreme penalty was not murder, but forgery. The general principle which governs both rules has been well stated by Lord Justice Fry in *Cleaver's Case* [1891] in the following terms:—'The principle of public policy invoked,' he says, 'is, in my opinion, rightly asserted. It appears to me that no system of jurisprudence can in reason include among the rights which it enforces, rights directly resulting to the person asserting them from the crime of that person. If no action can arise from fraud, it seems impossible to suppose that it can arise from felony or misdemeanour.' It would certainly seem, for the reason given by Lord Justice Fry, that it would be impolitic to permit a homicide, whether the crime be murder or manslaughter, to benefit by the death which he or she causes. And, as Sir Samuel Evans pointed out, all persons of experience are well aware that juries, in cases which would justify a graver verdict, frequently bring in a verdict of manslaughter when the accused is a woman.

Acting on this view, the President struck out the name of Jeannie Baxter from the list of defendants entitled to a *locus standi* in the Probate proceedings and this decision, we imagine, will be generally regarded as in accord with common sense.—*Ibid.*

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The Length of Trials.—That trials have become longer in recent years does not admit of doubt. The average number of actions tried by each King's Bench judge has fallen during the past ten years from 174 to 114. But why trials have become longer is a question that admits of plenty of discussion. Mr. Justice Ridley recently attributed the lengthening process to more talkativeness at the Bar, and Mr. Justice Darling, in the course of a trial over which he presided just before the Courts closed for the Long Vacation, found occasion to remark that 'those who criticised the way in which cases are allowed to run on hardly realised the extreme difficulty which a judge, presiding over a trial in which ill-feeling existed among the parties, had in inducing them or their legal advisers to adhere strictly to the limits of relevance.' Not long ago Lord Justice Vaughan Williams attributed the longer duration of trials to the abolition of the 'nice rules of pleading,' which defined the issues to be tried, and kept the speeches of counsel and the observation of judges—the learned Lord Justice was candid enough to admit that judges, as well as counsel, talked rather too much—within the strict limits of relevancy. Others, again, have ascribed the increasing length of trials to this spectacular methods which are necessary where jurymen have to be impressed. The increasing length of trials was one of the points which was discussed before the Joint Committee whose recommendations resulted in the appointment of an additional judge in 1910, and by none of the witnesses was it dealt with more effectively than by Mr. Justice Channell, who said:—

> Litigants now know not only what communication was passed between themselves and their opponents, but they know also what has passed between their opponents and their opponents' agents and correspondents. These documents are not only frequently read at the trial and commented on at length, but when they are not they supply matter for investigation, which greatly lengthens trials. Another cause for increased length is the increased facility for appeal and the constitution and practice of the Courts of appeal. The Court of Appeal discourage all short cuts and seem to think it a judge's duty not only to decide his cases, and to do so in such a way that his decision, if wrong, can be reviewed, which everyone will agree to be right, but they also think that the judge has to give to the Court of Appeal the materials for deciding all questions which may become material although in his view, they are not so. The practice has grown up, in consequence of the views so often expressed in the Court of Appeal, of conducting all cases with a view to a possible appeal, and not merely with a view to their immediate decision.

This represents, no doubt, the sounder view. The disposition towards irrelevancy and the spectacular treatment of jurymen are much too old a feature of the Courts to account for the recent growth in the length of trials.—*Ibid.*

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CRIMINAL PROCEDURE IN INDIA.

The issue of an official Blue Book on the *Sitapur Case* has confirmed the views expressed in these columns as to the grave necessity for effecting a reform in Indian criminal procedure. Three Natives of the North-west Provinces were tried on a charge of murdering another native before a district judge sitting with two assessors. The judge and one assessor disbelieved the witnesses for the prosecution and acquitted the prisoners; the other assessor disagreed with this course. Five months later the prisoners were re-arrested and charged again before the High Court of the Province; technically the trial had been 're-opened' at the instance of the Governor, Sir John Hewitt, who believed that a miscarriage of justice had taken place. They did not receive a new trial; the judges of the High Court called no witnesses, but read the record of the trial below, including the evidence there given, heard counsel for the parties and registered a conviction. Two of the prisoners were sentenced to death and duly executed. All this took place although the High Court judges had not seen the witnesses for the prosecution, whom the Court below refused to believe, and so had no means for estimating their credibility. A telegram was sent to the Governor-General on behalf of the prisoners asking him to exercise the prerogative of mercy; he wired back that the petition must be sent to the Governor of the Province. The latter received the petition, refused to exercise the prerogative in favour of the prisoners, and, furthermore, refused to transmit the petition to the Governor-General. His reason for refusing to do this seems formally sufficient, since he would have had to respite the execution in order to give time for its consideration. But no similar justification can be found for his refusal to exercise his discretion in favour of the prisoners by himself granting a reprieve. In view of the difference of judicial opinion this ought to have been done. The whole system of re-trying acquitted persons, too, is repugnant to British notions of justice and fair play; there seems no valid reason for retaining it in India, except, perhaps, in the case of political offences, where the special circumstances may require a special rule. —*Ibid.*

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The Institut of International Law at Oxford.—This week the Institut of International Law, the most distinguished association of jurists in the world, is holding its annual meeting at Oxford. Its deliberations will be shorn of the presence of two men who in former years have taken a prominent part in them. The late Professor Westlake, who was the acknowledged leader of the English school of international lawyers, was at the time of his death honorary president of the Institut; and Professor Asser, who held the same place among the Dutch jurists, has done invaluable service in the cause of international arbitration, and likewise in the codification of the rules of private international law. But though some of the grand old men of international law are passing away the science is continually progressing in definiteness and influence; and the English contingent in the Institut, which numbers such men as Professors Holland, Dicey, and Oppenheim, and Lord Justice Kennedy, worthily represents the traditions of this country. The chief work before the Institut at the Conference is the formulation of a code of maritime warfare. The last Hague Conference, which had before it the same task, failed to complete it, and only produced a number of Conventions on separate portions of the subject. But the approaching Hague Conference, which is expected to assemble during the year after next, will resume the task and, it is hoped will achieve a more conclusive result. The Conference at London, which four years ago produced the famous Declaration, settled most of the disputed points in the relation, of belligerents and neutrals; and though the instrument is not yet ratified, it is likely to obtain the adherence of the Great Powers when a few amendments have been made. But the relations of naval belligerents *inter se* remain to be settled, in order that warfare at sea may be subject to law equally with warfare on land. And the Institut is recognised by statesmen and diplomatists as preparing the way for international Conventions. It was at Oxford that, some twenty years ago, it formulated many of the rules that have now passed into the Hague Code of the Laws of War on Land; and its meeting this year at the most ancient school of law, as of all higher learning in England, is of good augury for the fulfilment of the plan of a code of maritime warfare. The use of mines and aircraft in naval war, the right of maritime capture, the limits to the right of bombardment—these are among the matters which are still in dispute between nations, and for which the Institut will endeavour to find the just rule. The discussions of a body of distinguished jurists and judges, which considers the development of the *jus gentium* without national partnership and from a profound mastery of jurisprudence, are a factor of incalcu-

lable value in extending the reign of law and securing respect even in war for the principles of humanity—*Ibid.*

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The Cost of the High Court.—The niggardly way in which the Treasury is wont to regard the High Court receives no justification from the legal budget. During the past financial year, as a newly published Return shows, the receipts in respect of the High Court amounted to 483,799*l.*, and the expenditure to 692,675*l.* If, then, the administration of justice is one of the most important functions of the State, the High Court, which last year cost the country not more than 208,876*l.*, cannot be regarded as a costly institution. And be it remembered that this apparent deficit of 208,876*l.*, covers not only the annuities of retired judges and officials, but also the large amount of Crown and criminal work which the judicial staff is called upon to do, including that of the Court of Criminal Appeal. The expenditure recorded in the latest Return, notwithstanding the appointment of an additional judge, is 7,187*l.* less than in the previous year, while the receipts are 680*l.* more. Though the state does not make a profit out of the High Court—and it is wholly undesirable that the administration of justice should yield one—litigants may enjoy the satisfaction of knowing that, so far as the current expenses of the Supreme Court are concerned, they pay their way.—*Ibid.*

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A good story is told of the late Lord Ashbourne, who was at one time Lord Chancellor of Ireland. Occasionally, says the *Law Times*, in the Court of Appeal, Lord Ashbourne would make up his mind to bring a case to an end before the rising of the court, and it was highly instructive to watch the proceeding.

A junior, who was not conscious of his humour, stood up to open what appeared to be a short interlocutory appeal. Lord Ashbourne, after a sentence or two had been spoken, interjected, "Now, Mr. — why should we reverse the King's Bench on a point like this?"

"My Lord," rejoined counsel, "there are six reasons why the order should be reversed."

"Then," said the president of the court, "suppose we commence with your three best."

"No, my Lord," said counsel, "I could not consent to that because I have frequently succeeded in this court upon my bad points."

Lord Ashbourne collapsed, and for once was unable to have his own way in the Court of Appeal.— *Law Student's Journal.*

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COURTLY CHIVALRY.

When a verdict goes against you
And you feel a little blue,
And the clouds on life's horizon
Have a dark and dreary hue,—
Falter not—nor be discouraged,
Have a hopeful heart instead;
If you bravely keep a going
You'll see better days ahead.

Is your adversary beaten,
In an earnest, honest fight?
In his hour of misfortune
Have no boasting nor delight;
When you win a righteous verdict
Be a knight in manner true,
And sometime when he's the victor
He'll be courteous to you.

If the clients harbor hatred
In their heated battle lust,
Never yield to the temptation
To be wilfully unjust;
Though you've battled most sincerely
Clients' causes to maintain,
You have fought as lawyers merely,
Brothers still at heart remain.

What is he who plays the "braggart"
But a sounding false pretense,
Vainly striving for promotion
At his fellowman's expense?
Though they gather brightest laurels
From the lawyers' battle fields,
Bravest hearts abound in pity
When a gallant foeman yields.

Like the knights who battled bravely
In the bravest days of old,
Lawyers chivalrous and courtly
All the knightly graces hold;

And there's nothing more delightful
Than to be wherever are
Noblest men of God's creation
Loyal members of the bar.—*The Lawyers Magazine.*

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Surprisingly few cases have been reported involving kleptomania as a defence to burglary or larceny.

The Missouri case of State v. Riddle, 150 S. W. 1044, annotated in 43 L.R.A. (N.S.) 150, holds that an irresistible impulse to steal is no defense to an indictment for burglary, if accused knew the difference between right and wrong.—*Ibid.*

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Ethics of the Street. A law has been enacted in Prussia which makes it a prison offence for anyone to fail to answer a cry for help or to go to the rescue of a person in danger when it is possible to do so without endangering one's own life.

Such a law would not be amiss in Chicago, says the Chicago Tribune. Not only ethics, but ordinary decency and manliness, are too frequently forgotten here. Let a thug assault a person in the street, and the majority of men who happen along, instead of going to the assistance of the person assaulted, will scurry away so as not to be dragged into the affair. Let a person be injured by a street car, and half the people who witnessed the accident will refuse to give their names to be called upon as witnesses by the victim.

Whether all the ethics of citizenship can be enforced effectively through laws and ordinances may be doubted, yet the legal declaration of some primary duties would help to develop a conscience in such matters now apparently sadly lacking.—*Ibid.*

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RIGHT OF PARENT TO ATTEND FUNERAL OF CHILD.—A curious action came before the Supreme Court of Iowa in *Rader v. Davis*[1], viz., an action by a father for damages for refusing him permission to attend the funeral of his child. The defendant was the father of his former wife from whom he had been divorced, the decree having given the custody to her and she having gone to live with her parents. The question was, had plaintiff either an absolute or qualified right to attend the funeral of his child which was being held from defendant's house? He obtained no right, says the court, by reason of his former wife having taken up her domicile with her parents. They were as much strangers to each

1. 97. N. W. 849.

other as if they had never been married. True, the child was of his own blood, but by decree of court he had lost all right of custody or control of the child, and it was for the mother to say how the body should be controlled, where the funeral services were to be conducted, and where and how the child should be buried. By plaintiff's misconduct he had forfeited all rights to the custody and control of the child which he might otherwise have had. So he had neither an absolute nor a qualified right to control the disposition of the body of the child or the funeral arrangements. But it was contended that he had the right to attend the funeral which was being held at defendant's house; and that whether he tried or not, and conceding defendant's lawful right to say who should come upon his private premises for any purpose, even to attend a funeral, yet if he, defendant, although acting within the strict legal rights, maliciously denied plaintiff the right to enter the premises to see his child, or to attend the funeral services, an action will lie.—*American Law Review.*

* * *

INTEREST AS DAMAGES IN PERSONAL INJURY CASES.—The Supreme Judicial Court of Massachusetts rules that in an action for personal injuries received by the plaintiff while a traveller from a defect in a highway, the plaintiff was not entitled to an instruction to the effect that in ascertaining damages the jury had a right to add to the fair compensation interest by reason of delay. *Cochran* v *Borton.*[1]

A personal injury, the court said, does not create a debt, and does not become a definite obligation until a verdict is entered; and interest, which is compensation for the use of money which is due, may not be considered in determining the amount of damages, which must be such as will fairly compensate the injured person for the loss of time, physical and mental suffering suffered and likely to be suffered, and money reasonably expended and to be expended in consequence of the injury. When there has been a definite injury to specific property interest is properly given, so when property is taken by eminent domain.—*Ibid.*

* * *

CARRIERS OF PASSENGERS—REFUSAL TO STOP CAR TO RECOVER PASSENGERS' PROPERTY.—The Supreme Judicial Court of Massachusetts holds that where a passenger on a subway car, lost his violin because of a jerk of a car not due to the carrier's

1. 97. N. E. 1100.

negligence, the carrier was under no obligation to accede to plaintiff's request to stop the car that he might get the instrument, such a stop between stations being fraught with danger of collision with the following car.—*Ibid.*

* * *

REGULATING THE CALLING OF THE BARBER—The Supreme Court of Missouri decides that a State statute requiring one to work for two years as a barber student before being allowed to carry on his calling, is constitutional. It is a proper police regulation affecting the public health and determining the time in which a student of barbering would have sufficient knowledge to prevent the spread of contagious diseases—which are proper subjects of legislative discretion.

But two provisions in the law the court held to be void, one which prohibited barber shops from advertising except putting out a sign "barber school" or "barber college" and the other prohibiting barber colleges and students therein from charging or receiving pay for their services.—*Ibid.*

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DEFAMATION—ACTION BY HUSBAND.—A husband may maintain an action for damages for the physical illness of his wife due to mental anguish caused by the publication of words reflecting upon her character which were libellous *per se*. *Garrison v. Sun Publishing Co.*, 135 N. Y. S. 721.—*Ibid.*

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Action by Wife for Loss of Consortium.—The Supreme Court of Ohio decides that one who with knowledge that a husband by the constant and continued use of morphine has become so weakened in body and mind that he is unable to resist his cravings for the drug, and who after the repeated protests of the wife continues to sell morphine to the husband until by the use thereof his mind becomes so impaired and destroyed that it is necessary to confine him in an insane asylum, is liable to the wife for damages for her loss of consortium. *Flandermeyer* v. *Cesper* [98 N.E. 10.2]

There is no case of the kind in the Ohio reports but two earlier cases in New York and North Carolina support its conclusion. In the New York decision it was laid down that an action can be maintained by a husband against a druggist to recover damages for selling to the plaintiff's wife, secretly, from day to day, large quantities of laudanum to be used by her as a beverage, and which

are so used by her to the defendant's knowledge, without the knowledge or consent of the husband, the defendant well knowing that the same was injuring and impairing her health, and concealing the fact of such sales and use thereof from the plaintiff, in consequence of which use by her the wife became sick and emaciated, and her mind was affected so that she was unable to perform her duties as such wife, and her affections became alienated from her husband, and he lost her society and was compell d to expend divers sums of money in medical and other attendance upon her. *Hoard* v. *Speck* [56 Barb. 202] Morgan J., dissented upon the ground that there was no precedent to be found and that the action was not sustainable upon any ground known to the common law. In North Carolina it was held that "the sale of laudanu mas a beverage to a married woman knowing that it is destroying her mind and body and causing loss to her husband, when continued after his repeated warnings aud protests, renders the seller liable to him for damages which he sustains on account of the loss of her services." *Holleman* v. *Harward* [119 N. C. 150]—*Ibid.*

* * *

The Will of a Spirtualist.—In South Dakota, a testatrix left all her property to the National Spritualists' Association of the United States, which devise was contested on the ground of the testamentary incapacity. It was shown that she was possessed of the belief that she had frequent and continual communication with departed spirits, who gave her directions regarding all her actions in the ordinary affairs of life; that she was obliged to follow the directions given her by them and that she had been directed by such spirits to give and bequeath all her property to the Spiritualists' Association. The Supreme Court of South Dakota holds that a belief in spiritualism is not or itself evidence of insanity though an insane delusion may arise out of a religious belief, and to invalidate a will the insane delusion must be operative in the testamentary act. *Irwin* v. *Latten*[135 N. W. 759.]

The court quotes from a Michigan case where it is said:

"One accepts his religious faith on evidence that is satisfactory to his mind. A court of law will never inquire whether that faith is sound or unsound. It does not possess the machinery for executing such an undertaking. It will content itself with saying—and that is sufficient for the purposes of this case—that one's religious faith affords no evidence of insanity. It does not follow, however, that one may not have such a faith in spiritualism as to destroy his testamentary capacity. He may think so continually and persistently

upon this subject, as upon many other subjects, as to become a monomaniac, incapable of reasoning where this subject is concerned. In that case, it should be said that a will, made in consequence of such monomania, is void for lack of testamentary capacity. So, too, a believer in spiritualism may have such extraordinary confidence in spiritualistic communications—whether those communications reach him through mediums, or are received by him, as he believes, directly—that he is impelled to follow them blindly and implicitly, his free agency is destroyed, and he is constrained to do against his will what he is unable to resist. A will made under such circumstances is obviously not the will of the testator, and it is therefore not admissible to probate. We need not speculate as to the ground upon which the conclusion rests. It is utterly unimportant whether it rests upon the ground of absence of testamentary capacity, or as held by the trial court, upon the ground of undue influence. It is sufficient to say that a will brought about by an influence which the testator could not resist is not his will".

And also from a Nebraska case where the court said:

"Law 'is of the earth, earthy', and spirit wills are too celestial for cognizance by earthly tribunals—a proposition readily conceded. And yet the courts have not assumed to deny to spirits of the departed the privilege of holding communication with those of their friends who are still in the flesh, so long as theydo not interfere with vested rights, or by means of undue influence seek to prejudice the interest of persons still within our jurisdiction".

The conclusion of the court was that the testatrix was not of sound and disposing mind, and the execution of the will was not her free, voluntary, and conscious act; so probate of it was denied. *American Law Review.*

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Defamation—Publishing that one is Dead.—A new York newspaper published of a living person that he was dead. In an action against the journal it was objected that the article was not libellous, because, even if such a false notice to the public might subject the plaintiff to ridicule, yet, as death is common to all and is no disgrace, the mistake could in no way affect his character and reputation, and therefore could not be libellous without proof and allegation of special damage. The Supreme Court, however, holds otherwise, for to be the butt of a false story holding one up for public amusement and jibes is to lessen the comforts and enjoyments to which that person is entitled.

"Every joke which a man may be willing to relate about himself for the amusement of his acquaintances does not justify another in printing it. To publish of a living person that he is dead is not that sportive and thoughtless ridicule that may beget laughter, that leaves the temporary victim unaffected in his reputation and his business and is not necessarily libellous.' An amusing incident may be so harmless that the courts can easily determine that no injury has been done the person who may be the subject of it, but yet no one can be held up in a false print for the public amusement to his annoyance and embarrassment without having an action for libel, even though the damage be slight."—*Ibid.*

* * *

Damages for Having to go to a Wedding in a Street Car.—In a recent Alabama case one Browning, who was about to be married, went to a livery stable and entered into a contract to furnish him, for the use of himself, friends and family, a carriage and team which was to be sent to his residence that evening to carry himself and his wedding party to the church where Browning was to be married. The charge was $5, which amount he paid, and informed the livery stable keeper of the purpose for which the carriage was to be used and the hour appointed for the ceremony. But the carriage did not come. "The plaintiff, on account of the defendants' breach of the contract, was compelled, in order to reach the church where his prospective bride and friends were awaiting his coming, to resort to a public street car, in which plaintiff and his family and friends, at the expenditure of 30 cents for street car fare, attended the wedding appareled in 'dress' or 'evening' clothes. The plaintiff and the lady members of his family, unsuitably attired for riding in a street car and for walking along the public streets, had to walk for several squares from the place necessary to leave the car line in going to the church, and the wedding ceremony was delayed for 45 to 50 minutes on account of the failure of the plaintiff to reach the church in time. During this period of delay, the bride, family, minister, and friends in attendance at the church were kept waiting upon the delayed arrival of the prospective groom." The jury in an action against the livery stable keeper were instructed by the court that they could only give the plaintiff the actual damage he suffered, viz., $5.30 and interest. But on appeal the judgment is reversed, the Supreme Court holding that he is entitled to recover for physical discomfort in consequence of being delayed and not having proper conveyance to meet the appointment,

and for mental anguish suffered in consequence of the physical inconvenience and delay.—*Ibid.*

* * *

Property in Private Letters.—If the ordinary private letter were exactly on a par with the chattel which passes at common law by delivery, the recipient of the letter would, on his receiving it, become the absolute owner thereof, and would be able to exercise an absolute dominion over it, but although, as has been decided by the case of Percival v. Phibbs, the writer of a letter, in sending it, makes a gift to his correspondent of the actual paper on which the letter is written, yet the real value in the letter is certainly not the substance of the paper on which the letter is written, but the right to make use of the words which are to be found thereupon.—*Ibid.*

* * *

It is Charles Summer, the great Massachusetts statesman and senator who as a young man under thirty, having only lately begun the practice of his profession in Boston, goes to England for a visit, with letters of introduction to members of the bench, and leaders of the bar in that country. He is warmly welcomed. He meets the great judges and lawyers of that day, at dinner, in court and in society, and he writes back to his old friend and teacher, Mr Justice Story, a most interesting description of the men he met.

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He writes first of the Court of Chancery:

"You know the reputation of the Chancellor (Lord Cottenham). It seems to grow daily and Tories, Whigs, and Radicals with one accord praise him. And this praise is a just tribute to the singleness and devotion with which he gives himself to the judicial functions of his office. I doubt if he adds in any way to the political strength of the ministry. He seems on the wool-sack, as on the bench, intent on some deep matter, silent, almost dull and ruminating. On the bench he hears with the greatest patience, never interrupting counsel except to interpose some pertinent, searching question—and this is done in the fewest words and most quiet way possible. He is said to be thinking of his law cases at all times. Of course, he has no time for society. I have seen him at one dinner only; and there he looked as if he were still hearing an argument. He is about fifty-eight, and had a seventh child a few weeks ago. I heard Langdale and some others laughing about it, saying it was the first child born to the great seal for more than a century. As a speaker in the Lords he is very dull. I have

already described the Vice-Chancellor (Shadwell) to you in former letters. He is sparkling, gay, and animated in conversation, with a fresh-looking countenance. He swims in cold water every morning, warm or cold though the weather be. Some barristers, who are not pleased with his judicial services, have hoped that he might some time get frozen or drowned. He is not regarded as a good judge. Lord Langdale (the Master of the Rolls) I should have mentioned, of course before the Vice-Chancellor. He is about fifty-five and of the size of Mr. Binney, with a bald head, and with a voice which in conversation reminds me of Webster's; in manner frank, open, and warm. He has disappointed the bar. I have communicated to several barristers the opinion you have expressed about him; but they all say he is a failure—and these, too, are some of his most intimate friends. I may mention Sutton Sharpe and John Romilly, both of whom in politics coincide with Langdale; but who said with regret that he had disappointed them as a judge. His decisions amount to nothing, they say, and he is irresolute in his judgment. His opposition to the Lord Chancellor's Bill, in 1836, which seemed so unaccountable to us in America, is accounted for here. It seems that he had submitted his own views to the Lord Chancellor, who, notwithstanding, introduced his own measure, which was defeated by the opposition of Langdale."

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Then the judges of the King's Bench are thus described:

"You know Lord Chief Justice Denman, intellectually, better than I; but you do not know his person, his voice, his manner, his tone—all every inch the judge. He sits the admired impersonation of the law. He is tall and well-made, with justice-like countenance: his voice and the gravity of his manner, and the generous feeling with which he castigates every thing departing from the strictest line of right conduct, remind me of Greenleaf more than of any other man I have ever known. I wish you could have listened to Lord D., as I did on the circuit, when he sentenced some of the vicious and profligate wretches brought before him. His noble indignation at crime showed itself so naturally and simply that all our bosoms were warmed by it; and I think his words must have gone like iron into even the stony hearts of the prisoners. And yet I have seen this constitutional warmth find went on occasions when it should have been restrained: it was directed against the Attorney-General, who was pressing for delay in a certain matter with a pertinacity rather peculiar to him. Lord D. has, to a remarkable degree, the respect of the bar; though they very generally agree that

he is quite an ordinary lawyer. He is honest as the stars, and is willing to be guided by the superior legal learning of Patteson. In conversation he is gentle and bland; I have never seen him excited. Mr. Justice Littledale is rather advanced in Life; I should call him seventy. He has the reputation of great book-learning; but he seems deficient in readiness or force, both on the bench and in society. I heard old Justice Alan Park say that Littledale could never get a conviction in a case where there was any appeal to the feelings. Mr. Justice Patteson is the ablest lawyer on the Queen's Bench—some say the first in all the courts. As I have already written you, he is unfortunately deaf, to such a degree as to impair his usefulness, though by no means to prevent his participating in the labors of the bench. He is deeply read and has his learning at command. His language is not smooth and easy, either in conversation or on the bench; but it is always significant, and to the purpose. In person he is rather short and stout, and with a countenance that seems to me heavy and gross; though I find that many of the bar think of it quite otherwise. I heard Warren—author of 'Diary of a Physician,' etc.—say that it was one of the loveliest faces he ever looked upon: perhaps he saw and admired the character of the man in his countenance. I dave heard many express themselves about him with the greatest fondness. He has a very handsome daughter. Williams—commonly called 'Johnny,' or 'Little Johnny' Williams—is short in person. He was the ancient associate of Brougham in the Queen's case, and was made a judge by his Lordship. He has the reputation of being a good classical scholar; though I do not remember ever observing either in his conversation or judgments, any particular marks of the attainments attributed to him. Indeed, I have always thought him dull: he certainly is an ordinary lawyer, and has very little legal talent. He seemed often in inextricable confusion on the circuit. He is famous for very early rising, and for falling asleep in company. I have seen him fall asleep at the head of his own table; and they tell a story that Brougham once made a dinner, in order to give Williams an opportunity of meeting some persons who would furnish him some valuable materials for a motion he was about to make in the House of Commons; but before they arrived at that stage of the dinner when the conversation was to be opened, Williams was nodding. I will, however, do him the justice to add that I once dined in company with him at Cresswell's, when he continued awake during all the time. Coleridge is the junior of the Queen's Bench; and a moderate Tory, who was appointed by Sir Robert Peel. He never had a large business at the bar, but has pleased

everybody on the bench. I believe him to be a man of learning, and of the highest honor—in personal appearance quite agreeable, and in accomplishments inferior to nobody on the bench. As the junior judge, it devolves upon him to read the reports of the evidence on all motions for a new trial. I have never met him in society—the only judge I have not."—*Ibid.*

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"Turn next to the Common Pleas: There is, first Lord Chief Justice Tindal. He sits bent over his desk in court, taking note constantly—occasionally interposing a question, but in the most quiet manner. His eyes are large and rolling; in stature he is rather short. His learning, patience, and fidelity are of the highest order. He is one of the few judges who study their causes on their return home. His manner is singularly bland and gentle, and is, perhaps, deficient in decision and occasional sternness. Serjeant Wilde is said to exercise a very great influence over him; indeed, scandal attributes to him some of 'the power behind the throne greater than the throne.' Upon Tindal devolves the decision of all interlocutory matters in his court—the other judges seldom interposing with regard to them, or, indeed, appearing to interest themselves about them. He is one of the kindest men that ever lived. Next to Tindal is old James Alan Park, the oldest judge on the bench, and who, it is reported, is now at the point of death. He has been some fifty eight years at the bar and on the bench; is a staunch Tory, and a believer in the divinity of wigs. He dislikes Campbell, the Attorney-General; interrupts counsel very much, and has some of the petulance of age. There are a thousand amusing stories about him, which the lawyers tell at dinner to illustrate his puritanical character. Then comes Vaughan. He became a serjeant some time in the last century, and was the youngest ever known. At one period his practice was greater, perhaps, than that of anybody ever known in the courts—his income was some fifteen thousand pounds. About 1820 his leg was broken very badly by a cartman, who ran against him as he was driving in a gig. After being confined to his bed for three months, he at length appeared in court on the shoulders of his servants; had a hole cut in the desk before him for his leg; and, by permission of the court, addressed the jury sitting. His business at once returned to him. In 1820 he was made a judge, it is said at the bar, by the direct command of George IV., who was moved to it by his favorite physician, Sir Henry Halford; which gave occasion to the saying in the bar-benches that 'Vaughan was made a judge by prescription.' He is reputed to

have the smallest possible allowance of law for a judge; but he abounds in native strength and sagacity, and in freedom in language. With him the labors of the judge cease the moment he quits the bench. I doubt if he ever looks into a cause at chambers. In his study he once showed me four guns, and told me with great glee that, by sending a note to Serjeant Wilde, he persuaded him not to make any motions on a certain day, and got the Court of Common Pleas adjourned at twelve o'clock; he at once went fifteen miles into the country, and before four o'clock had shot four braces of pheasants—the learned judge sitting on horseback when he fired, as from his lameness he was unable to walk. He is fond of Shakespeare, and often have we interchanged notes during a long argument from Follett or Wilde (while I was sitting by the side of the latter in the Serjeant's row), the burden of which has been some turn or expression from the great bard—the crowd supposing he was actively taking minutes of the argument, while he was inditing something pleasant for me, to which I never failed to reply. Bosanquet you well know as a reporter. As a judge he seems dry and reserved, sitting on the extreme left, and apparently taking so little interest in the causes, that his qualities as a judge seem to be all negative. You do not hear him talked of by the bar, nor meet him in society. Lord Denman told me that he went his first circuit as judge in company with Bosanquet, who taught his Lordship how to wear robes, and which of the various robes to assume on certain days. Next is Coltman, whose appointment astonished everybody, and is said to have been a job of Brougham. He was of the Northern circuit, and a friend of Brougham. He is a dull man; but as honest and good-natured as the day. I have seen him perplexed in the extreme, both before a jury and in banc, by the arguments of counsel. He is truly amiable, and is much of a liberal."—*Ibid.*

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NEXT WE have the Judges of the Court of Exchequer:

"Abinger (the Chief Baron). You know his wonderful success at the bar—confessedly the greatest advocate of his time, yet never eloquent, and supposed by all to be the most competent person possible for the bench; and in this opinion all would have persevered, *nisi regnasset*. He is the great failure of Westminster Hall. To his own incompetency he added last term a jealousy of Barons Alderson and Parke. He wants the judicial capacity: he was so old before he reached the bench that he could not assume new habits. I should, however, do him injustice, if I did not tell you that Mr. Maule—one of the first lawyers in Westminster Hall—told me

that he was mending; that he had given up all idea of competing with Parke and Alderson in technical learning and subtlety, and seemed now to aim directly at the common sense of a case—a habit quite valuable in a judge supported by such learned associates. In person Lord Abinger is large and rather full, or round: he is the largest judge on the bench. He has become a thorough Tory; and in society, I think, is cold and reserved. Brougham says that Scarlett was once speaking of Laplace's 'Mecanique Celeste' at Holland House as a very easy matter; Brougham told him he could not read it, and doubted if he could do a sum in algebraical addition. One was put, and the future Lord Abinger failed; and, as Lord B. said, he did not know so much about it as a 'pot-house boy.' It was reported in Westminster Hall that arrangements were recently attempted to procure his retirement in favor of his son-in-law, the Attorney-General; but unsuccessfully. Baron Parke is the senior puisne judge. He is about fifty-six years old; is rather above the common size, quite erect, and with eyes the brightest I ever saw. He is always dressed with great care, and in the evening wears a blue coat and bright buttons—which is also the dress of Lord Abinger and several other judges. He is a man of society, and succeeds to a remarkable extent in uniting a devotion to this with great attention to his elevated judicial duties. He is also not a little conceited and vain. Lady Parke is a person of remarkable personal attractions for her years. They have a daughter who goes with them into society, who is quite pretty. All have the reputation of being very fond of the highest society. You know Baron Parke from the books as well as I. I think the profession place him at the head of the bench: the only to be compared with him are Alderson and Patterson. Alderson is hafty and crotchety. Parke is also open, in some degree, to the same objection. He is not what you would call fluent on the bench; though there is no particular want of words. I think he could not have been eloquent at the bar. He is evidently a well-read lawyer; and yet he is not a jurist. You will understand my meaning. Next is Baron Alderson. He and Baron Parke were both on the Northern Circuit, which has given more judges than any other to Westminster Hall. Abinger, Parke, Alderson, Tindal, Coltman, Williams, and the other—I forget which—were all of this circuit. I have written you so much and often about Alderson that I have little to add. Like Parke, he is a Tory; I have heard them both called "bitter Tories.' He has not the air and manner of Parke. Indeed, he is gauche, and abrupt and uneven in his voice. He is an excellent scholar; and when at Cambridge he carried away;

at the same time the highest classical and mathematical prizes of the University—a conjunction that has very rarely occurred. He is now about fifty, has light hair, and a high forehead. I have heard from him a higher display of the judicial talent than from any other judge in England. The bar, however, think him often unsafe. Some dislike him on account of his Toryism, others from pique and imagined personal coldness or insult, I heard that he has more enemies —or, rather, more who called him hard names—than any other judge in Westminster Hall. Lady Alderson is a modest, quiet person, with a young family; she is the sister of Lady Gifford—the dowager of the late Lord Gifford. It was to Baron Alderson that I was indebted for an introduction to the latter lady, and also to the Bishop of Durham. Leckhart seems to be quite a friend to Alderson. I have always met him when I have been at the Baron's. Alderson has a good deal of dry humour. It was he who said, on Brougham being made Lord Chancellor; " If his Lordship knew a little law, he would know a little of everything.' Baron Gurney is old, and appears infirm. I never meet him or hear of him in society. On the bench he is always silent, and indeed is dead weight."

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From the judges he passes to the leading members of the bar: Sir John Campbell, who was to become Chief Justice and Lord Chancellor; Follett, who was to die young, and Wilde, who was also to become a Lord Chancellor.

" Sir John Campbell, the Attorney-General. is a Scotchman by birth. He is now about fifty-eight. He has been a laborious, plodding man, and has succeeded by dint of industry and strong natural powers, unadorned by any of the graces. He has a marked Scotch accent still. He is a very powerful lawyer; but his manner is harsh and coarse, without delicacy or refinement. I think he is not much liked at the bar; though all bow to his powers. They call him ' Jack Campbell.' We pronounce his name wrong in America. All the letters, including b, are pronounced; thus, Campbell, and not Camell, as we say. He was astonished when I told him that his ' Reports' had been republished in America; and I thought he was not a little gratified. Sir William Follett is truly a loveable persons and one great secret of his early success has been his amiability. He is about forty-two, and is still youthful in manners and conduct. As a speaker he is fluent, clear, and distinct, with a beautiful and harmonious voice. He seems to have a genius for law: when it comes to the stating a law point out and its argument, he is at home and goes on without let or hindrance, or any apparent exertion.

His business is immense; and he receives many briefs which he hardly reads before he rises in court. His income is probably fifteen thousand pounds. Strange thing in his history of the bar, he is equally successful in the House of Commons, where I have heard them call for "Follett, Follett!" and here he shows a parliamentary eloquence of no common kind, and also wins by his attractive manner. He is the great favourite of the Tories, and, in the event of their return to power, would be Lord Chancellor—a leap wonderful to take, but which, all seem to agree, would be allowed to him. In the event of the death of Sir Robert Peel—such is the favor to him—I think he might become the leader of the Tories in the Commons, if he would consent, which is not at all probable. Serjeant Wilde is different from both of these. He commenced as an attorney; and Mr. Justice Vaughan has told me that he has held more than a hundred briefs from him. After his entrance to the profession, he was guilty of one of these moral delinquencies which are so severely visited in England. I have heard the story but have forgotten it. In some way, he took advantage of a trust relation, and purchased for himself. He was at once banished from the Circuit table. A long life of laborious industry attended by the greatest success, has not yet placed him in communion with the bar; and it is supposed that he can never hope for any of those offices by which talents and success like his are usually rewarded. I think it, however, not improbable that the Government, in their anxiety to avail themselves of his great powers, may forget the past but society will not. He does not mingle with the bar, or, if he does it is with downcast eyes, and with a look which seems to show that he feels himself out of place. He is the most industrious person at the English bar—being at his chambers often till two o'clock in the morning, and at work again by six o'clock. His arguments are all elaborated with the greatest care; and he comes to court with a minute of every case that can bear upon the matter in question. In the Common Pleas he is supreme, and is said to exercise a great influence over Lord Chief-Justice Tindal. He once explained to me the secret of his success: he said that he thoroughly examined all his cases, and, if he saw that a case was bad, in the strongest language he advised its adjustment; if it was good, he made himself a perfect master of it. He is engaged in every cause in the Common Pleas. In person he is short and stout, and has a vulgar face. His voice is not agreeable; but his manner is singularly energetic and intense—reminding me in this respect of Webster more than any other person at the English bar. If you take this into consideration in connection with his acknowledged talents and his persevering

industry, you will not be at a loss to account for his great success. I have been told that he was once far from being fluent; but now he expresses himself with the greatest ease. His language has none of the charms of literature; but it is correct, expressive, and to the purpose. In manners, to his friends he seems warm and affable. To me he has shown much volunteer kindness. I have conversed with him on some points of professional conduct, and found him entertaining very elevated views. He told me that he should never hesitate to cite a case that bore against him, if he thought the court and the opposite council were not aware of it at the moment."

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We pass from these to the letters wherein are given pen pictures of the great lawyers and judges of the United States during the first decade of the nineteenth century. It is Judge Story who writes of the judges of the Court that he was afterwards to adorn—the Supreme Court of the United States.

"The bench consists of Marshall, Chase, Cushing, Washington, Livingston, Johnson, and Todd. Marshall is of a tall, slender figure, not graceful nor imposing, but erect and steady. His hair is black, his eyes small and twinkling, his forehead rather low, but his features are in general harmonious. His manners are plain, yet dignified; and an unaffected modesty diffuses itself through all his actions. His dress is very simple, yet neat; his language chaste, but hardly elegant; but it does not flow rapidly, but it seldom wants precision. In conversation he is quite familiar, but is occasionally embarrassed by a hesitancy and drawling. His thoughts are always clear and ingenious, sometimes striking, and not often inconclusive; he possesses great subtility of mind, but it is only occasionally exhibited. I love his laugh, it is too hearty for an intriguer, and his temper and unwearied patience are equally agreeable on the bench and in the study. His genius is, in my opinion, vigorous and powerful, less rapid than discriminating, and less vivid than uniform in its light. He examines the intricacies of a subject with calm and persevering circumspection, and unravels the mysteries with irresistible acuteness. He has not the majesty and compactness of thought of Dr. Johnson; but in subtle logic he is no unworthy disciple of David Hume. Washington is of a very short stature, and quite boyish in his appearance. Nothing about him indicates greatness; he converses with simplicity and frankness. But he is highly esteemed as a profound lawyer, and I believe not without reason. His written opinions are composed with ability, and on the bench he exhibits great promptitude and firmness in decision. It requires

intimacy to value him as he deserves. Livingston has a fine Roman face; an aquiline nose, high forehead, bald head, and projecting chin, indicate deep research, strength, and quickness of mind. I have no hesitation in pronouncing him a very able and independent judge. He evidently thinks with great solidity, and seizes on the strong points of argument. He is luminous, decisive, earnest and impressive on the bench. In private society he is accessible and easy, and enjoys with great good humour the vivacities, if I may coin a word, of the wit and the moralist. Of Chase I have formerly written. Of a nearer view, I am satisfied that the elements of his mind are of the very first excellence; age and infirmity have in some degree impaired them. His manners are coarse, and in appearance harsh; but in reality he abounds with good humor. He loves to croak and grumble, and in the very same breath he amuses you extremely by his anecdotes and pleasantry. His first approach is formidable, but all difficulty vanishes when you once understand him. In person, in manners, in unwieldy strength, in severity of reproof, in real tenderness of heart, and above all in intellect, he is the living, I had almost said the exact, image of Samuel Johnson. To use a proverbial expression, I like him hugely. I ought not to pass by Judge Johnson, though I scarcely know how to exhibit him individually. He has a strong mathematical head, and considerable soundness of erudition. He reminds me of Mr. Lincoln, and in the character of his mind he seems to me not dissimilar. He has, however, less of metaphysics, and more of logic. This is the first time of Judge Todd's appearance on the bench, and as he is a modest, retired man, I cannot delineate him. He does not appear to want talents."

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And here is a picture from the same pen of a sitting of the Supreme Court of New York, which Story dropped in to see while on his way from Boston to Washington in June, 1807:

"Kent, the Chief-Justice, presided with his singular plainness and promptitude; the counsel seem in the habit of very long and elaborate arguments, and diffuse their thoughts over a length of surface which exceeds all reason and all good effect. We despatch business with quite as much celerity, and as much judicial skill; nor should we decline a contest with their ablest lawyers, in any causes which require eloquence or learning. The more I see and hear in respect, the more am I satisfied that Massachusetts has no reason to resign her legal rank. The court room is very small and inelegant. It resembles the bar-room of a tavern more than the Hall of Justice.

The jury, witnesses, and spectators are crowded into a narrow space, and it is difficult to say who are the one or the other. The counsel are not elevated, but stand on the level floor, and talk very much as you and I should, if we were addressing referees. On the whole, the appearance is wholly undignified. A prisoner was tried the other day for forgery, and though the crime is punished with imprisonment with hard labor for life, there was a little bustle as would be in a Justice Court, in deciding upon the petty larceny of a pewter spoon. Kent summed up to the jury in a very short and loose manner, and afterwards, in pronouncing sentence on the convict, stated the sentence with the celerity of a school boy repeating his task. I must, however, tell you, that he has the confidence of a great lawyer in all his actions, and is self-poised on his own resources."

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And with a picture of the great Massachusetts Chief Justice of the time, and of Mr. Justice Story himself from other pens the Docket puts his Common Place Book back again on the shelf for another year:

"The person of Chief Justice Parsons has frequently been well described. He was about five feet ten inches in height, somewhat corpulent, and of a heavy appearance. His forehead was high and smooth; he wore a reddish wig (for he was bald at an early age), which was rarely placed upon his head properly. His mind was well adjusted, his wig never. He generally wore a bandanna kerchief about his neck to protect it from cold winds. His eye was clear, sharp, keen, and deep set in his head; it looked at you through and through. It seems to me the embodiment of the eye of the law, piercing through you, and seeing and discovering every thing with astonishing penetration. It was a glance that few could bear to have steadily fixed upon them. He was not very grave. He had an abundant and inexhaustible wit and pleasantry, which he delighted to exhibit on proper occasions. His repartees were surprisingly ready, appropriate, and, if he chose, severe. The young members of the bar used to gather around him, like the disciples of Socrates, to enjoy his pleasant and highly valuable instruction. A kind word from him (and he had many of them for young men) went deep into the heart, and was never forgotten. Parsons was not merely a lawyer. He had every scholar in the classics. He was found of novels, and, like Chief Justice Marshall, would spend the night over a romance, and the next day would read metaphysics with equal delight. No lawyer in Westminster Hall was superior to

him, and had he lived in England, we should have seen him not only in the front rank of English lawyers, but Chief Justice of the Kingdom."

" The knowledge of law of Mr. Justice Story was almost boundless. He had traversed all his coast and inland. He knew the soundings of all its seas, from the black Sea of the Feudal Law, and the Red Sea of the Criminal Law, to the great Atlantic and Pacific of National Law and Equity. His reading was not merely professional; it extended into the pleasant regions of general literature. He was well versed in the classics of Greece and Rome, of whom his favorites were Aristotle and Cicero. He was a good historical scholar; and in the sciences and mechanic arts, he had attained to considerable proficiency. He was omnivorous of knowledge, and read everything he could obtain. No legal work appeared, that he did not examine. Every volume of Reports in England and America he studied, and he read, to a considerable extent, the new works of light literature. His rapidity of perception and comprehension enabled him easily to master all that fell in his way; and his mind grappled with hooks of steel to all that he acquired. His literary discourses will evidence the general scope of his studies. He used, pleasantly, to say, that he had only time to read with his thumb-nail, and so it would seem to one who observed the rapidity with which he turned over leaf after leaf. Yet, despite this rapidity, he never failed completely to absorb the essence of the book."

CONTEMPORARY LEGAL LITERATURE.

In the *Case and Comment* for July there is an interesting discussion anent the Californian land-laws restricting the rights of Orientals to acquire land as to the treaty-making power of the Federal Government when it should come into conflict with the reserved powers of the States. The writer thinks and the precedents are in favour of his view that the treaties entered into by the Federal Government override individual State legislation but that it is desirable to have legislation providing for a machinery to give effect to such treaties as none exists at present and the broadening scope of international relations would seem to more and more require it.

The "Evolution of annotation" of cases is traced by Mr. Henry P. Farnham who says that in America, a case that is not annotated is as rare now as one that was thirty-five years ago. The least useful kind of annotaton is that which merely gives references to places

where cases on the subject are found collected. The next class shows how the case has been cited criticised, followed, explained distinguished or overruled. Another class of annotation consists in a collection of the leading or important cases more or less in point with the case reported. Of slightly more value is the annotation which purports to be an exhaustive collection of the cases in point arranged in a few general groups with now and then a case set out fully to illustrate the general application of the principle involved. Much more useful than the above is the annotation prepared by a competent text writer with an elucidation of the principle involved in the decision under review. Such a work to be really good requires ability of a high order, incessant study and a judicial temperament which few annotators can present. The highest evolution in annotation consists in an absolutely exhaustive collection of cases bearing on the subject with an attempt to point out and elucidate the principle involved. The best reasoned cases are indicated so as to enable the practitioner to examine the fewest cases possible in the preparation of the brief.

It is gratifying to find another writer in the same journal saying that of all the countries in the world, the United States has most to be proud in regard to her laws, her Courts of Justice and her learned Bench and Bar, although shamefully maligned by a few though loud complaints are heard against her judges and her system of procedure from other quarters (*e.g.* see the article "Respect for the Law" by Mr. Fish in the same Journal).

With the promulgation of the French Code Civil in 1804, Austrian Code in 1811, Italian Code in 1864, Canadian Code in 1866, German Code in 1900, the Swiss Code in 1907 and the Code of Obligations in 1910, Roman Law has practically ceased to be the positive law of any portion of the civilised world. Nevertheless, the Roman Law has not ceased to form a part of the curriculam of studies in any of the continental states. Professor Paul Girard discusses the phenomenon and the causes of the phenomenon in an address delivered by him before the Society of Public Teachers of Law. (Published in the *Comparative Journal of Legislation*, July 1911). The reasons why it has not disappeared in the continent are just the reasons for which it is studied in England for its value historically as affording the best field for tracing the evolution of legal ideas its scientific value in the training of the judicial sense, a function analogous to the study of classics, in literary education and from the fact that it

is Roman Law that has furnished the technical language and juridical categories for what may be called the universal common law of to-day, in addition because most of the codifications come whether mediately or directly from the Roman Law. He says that there must hereafter be a change in the mode of study. More attention must be paid to the historical aspect of the Roman Law than its positive aspect. He points out how in the text of Justinian itself, there is room for further research in the way of collation of manuscripts and correction of errors &c.

It is curious that cheques have not been in general use in France until quite recently. Even now they are not quite as generally used as in England. Mr. Barclay tells us in the same issue of the Journal that they were first introduced into France by a law of June 1865 which was subsequently added to in 1874 and that the practice of crossing cheques is of very recent introduction, by a law of December 1911. The writer doubts if it is likely that France will derive as much benefit from the practice as England bank accounts not being as common a feature there as in England. In England crossed cheques are seldom cashed but are compensated at the clearing house. In France, on the other hand, a crossed cheque is only an order to pay to be presented by a banker for payment.

In an article Mr. Arthur Barratt discussing "the Reports of the Divorce Commission from an American standpoint", points out that most of the recommendations of the majority are law in America and have not led to any serious consequences such as the minority apprehend and subjects the report of the latter to very minute and elaborate criticism.

Another paper is by Professor Harrison Moore on "*Legal Education in the United States*." The system adopted in Harvard and Columbia is what is called the *case* system, and not lecture system as in England. The case system consists in the exclusive teaching of law through discussion in class of decided cases. For this purpose case books have been prepared, consisting of a careful selection of leading and illustrative cases upon the subject of each course. They are quite different from the English Leading Cases in that they contain no notes. The students are expected to be a—head of the class. The cases which the students are expected to read beforehand will be discussed in class. Some student will be called upon to state the facts of the case so as to bring out the *ratio decidendi* clearly. The statement is followed by close examination of the dicta and questions left undetermined by reference to other decided

cases and by criticism. The merit of this system is that the student from the outset studies law in the manner in which it is to be done for the work in court and by reference to the original authorities. The defects of the system are that a large number of students must necessarily be unable to take part in the discussion for want of time, that even as it is longer courses are necessary than in England, that it leads to exaggerate the logical side of the law and to over-emphasize the consistency and harmony of the law with the result that with the students thus instructed, law becomes less and less an instrument for accomplishing present social ends and more an institution to the needs of which social ends themselves must be adapted. We get to a point of view according to which law does not exist for society but society for law. This is recognised by the professors themselves and they try to neutralise it by recommending the study of political science and philosophy of law by the students. Among the jurists whose life is given in the journal are *Gaius* and *Pothier*, the Great Roman and French Jurists. "*Problems of Roman Criminal Law*" by W. D. Aston Esq., is another article of great interest to students of the history of Ctiminal Law.

Sir Courtney Ilbert writes an introductien to the review of the legislation for the year 1911 wherein he sets forth the prominent features in the legislation of the various civilised countries of the world. The chief English acts were the Parliamentary Act which has curtailed the power of the Lords and reduced the maximum duration of Parliament and the Insurance Act. The copyright Act which extends the time of copyright to a life and fifty years, the Perjury Act which compresses into 19 sections the substance of 260 enactments on the subject are the most important of the minor acts. In India, the Sedition Act and the Factory Act were the most important. The Australian legislature provided by the *Arbitration* (Public service) Act for submission to the Arbitration Court of disputes between the Government and its employees, by the Commonwealth Electorial Act for a system of compulsory enrolment of voters. New South Wales raised the limit of exemption from income-tax from £200 to £300 and provided for reduction for each child maintained by the parents. In South Australia, the Legislative Council admitted *women* to the Bar. The New Zealand Legislature passed a Mental Defectives Act and granted pensions to indigent widows with children dependant on them. Sweden adopted in the year under review the principle of proportional representation *i.e.*, the people give their votes for their candidates chosen to represent them in their constituency but the actual number of the different political members in the Parliament

is settled in proportion to the number of votes given. As a result, different political parties are represented in Parliament by members proportioned to the votes given in the whole country for the particular political programme. The commission system of Municipal Government appeared to be growing in popularity in America. Under this system, towns elect a limited number of commissioners and invest them with absolute authority in all Municipal matters. Iowa joined the large number of American states which provide for the sterilisation of certain classes of inmates of public institutions. Six American states made procuring a female inmate for a house of prostitution or inducing a female to become a prostitute or continue in the house of prostitution or getting a share of the earnings of prostitute, felonies. The ordinary limits of age for elementary education in Jamaica are between the completion of six and fourteen years. Provision was made during the year for grants to Kindergarten Schools where children may be received between four and nine. Another piece of legislation has made it an offence to sound or play upon any musical or noisy instrument or make any noise whatever between 11 P.M. and 6 A.M. after a request to desist provided the request is founded on the illness of some person or on the loudness of the nuisance viz., that it can be heard two chains off or any other reasonable ground. Hongkong made an interesting attempt to adapt the English law of partnership to Chinese custom. According to the Chinese custom, the liability of a partner is unlimited in respect of partnership assets in his possession but his further liability is limited to such proportion of the debts and obligations of the partnership as his interest in the partnership bears to the total interest of all the partners. The Chinese custom also recognises partners who are not liable for the debts but participate in the profits. Such persons are said to hold red shares. They subscribe no capital and get no interest. They contribute their labour and skill for which they get a share in the profits.

In the *American Law Review* for May—June a learned writer discusses the history and development of the motion for new trial and in arrest of judgment. The two are more or less allied; the former being an application for a new trial by jury the latter to the Court not to act upon the verdict delivered. Motion for new trial used to be of two kinds—venire facias de novo, and venire de novo. Venire facias was available only for defects appearing on the face of the record for instance where the verdict was so imperfect that judgment could not be rendered upon it or where it appeared that other facts should have been found differently. This was admittedly a very old

remedy available to suitors. Venire de novo is not quite so old, though old nough there being traces of their having been granted in Edward III's time. It is the writ available when the objection to the verdict appears de hors the record. It would seem that for a very long time, that the only remedy available for a suitor when no defect appeared on the face of the record was to take out a writ of attaint against the jury for delivering of a false verdict and if that was found by a jury of 24, they were liable to be outlawed and their goods confiscated. But soon courts came in and gave relief in such cases on motions for new trial, and even broadened the grounds on which relief would be granted when they saw that Equity Courts might otherwise interfere. The grounds for which new trials are now granted are want of notice of trial, misbehaviour of the successful party towards the jury, misbehaviour of the jury, verdict contrary to evidence or without evidence, exorbitant damages, misdirection to the jury. These do not exhaust the grounds. The power however is discretionary and will not be exercised when substantial justice has been done or where the irregularity complained of has been harmless or when objection has not been taken at the trial. The motion in arrest of judgment is not so comprehensive as the motion for new trial though the motion for new trial serves the purpose of the former in all cases except where the objection is one to the form of the verdict, which is taken to be waived when once judgment is given. Judgment will be arrested on the ground of want of jurisdiction or any other fatal defect on the pleadings or in the initiation of the action and proceedings. If the defect is formal and amendable or if it has been raised on demurrer and has been overruled, it cannot form a ground for arrest. Neither error in the admission of evidence nor the insufficiency or the evidence to sustain the verdict is a ground for arresting judgment.

Reports and some Reporters is another interesting article in the American Law Review for July—August by Mr. Henry Budd. Under the English system of jurisprudence judgments are the best evidence of law and Sir Mathew Hale gives 4 reasons for it. First because the persons who give their opinions are persons chosen by the king for their learning &c. Secondly because they are upon their oaths to administer the laws. Thirdly because they have the best helps to inform their judgments. Fourthly because they do federe pro tribunali and their judgments are strengthened and upheld by the laws of this kingdom till they are by the same law reversed or avoided. A judgment is authority only on the points necessarily involved in the case; a statement of opinion

on a point not arising is no authority being what is called obiter dictum. "An obiter dictum in the language of the law is a gratuitous opinion, an individual impertinence which whether it be wise or foolish, right or wrong bindeth none not even the lips that utter it." A good report of a law case must contain the statement of facts, argument of counsel and the judgment of the Court. The first common law Reports of which we have any account are the year books. For some time it was thought they were compiled by paid official reporters but this view does not seem to be sustainable. They were, what Sir Frederick calls students' notes. They run on from Edward I's time steadily to Richard III (except the reign of Richard II) and intermittently through the reigns of Henry VII and Henry VIII. The book of Henry VIII is regarded as inferior to those of former reigns. Overlapping the last part of the time of the year books come certain independent reports, those of Bendloe, Dalison, Keilway, Dyer and Brooke. Of these Dyer's (afterwards Lord Chief Justice Dyer) reports are the most meritorious performances. These are improvements on the *Year books* which generally present a confused mass of dialogue between the Counsel and the judges, the reader often being left in doubt whether the speaker stood at the bar or sat on the Bench. Next to these comes Plowden who is a model reporter and who prepared himself for reporting each case by a study of the record. His report of *Hales* v. *Petit* is suspected to have given material for Shakespeare's gravedigger's scene in Hamlet. The next reporter of note is Sir Edward Coke whose reports are sometimes cited simply as the Reports *per excellence*. Following Coke while reports came, they were of various and doubtful authority; some seeming to be mere specimens of book—making by persons who had become possessed of the notes and manuscripts of deceased lawyers or judges. They are called flying reports in the preface to Croke or Crook's reports which are the next authentic reports. Croke was appointed judge in James I's time. His report was published after his death. An example of a reporter of disputed authority is Barnadiston against whom Lord Mansfield had a particular spite though even he has had the support of great Judges for the authority of his reports. The "best abused" reporters are Keble, Siderfin and Moseley. Even they have some supporters. From the Year books to the time of George III with the exception of Hetley who seems to have been an official reporter during the time of Charles I the reporters were all volunteers, mere free lancers reporting when and as they pleased. After the accession of George III, reporting became more regular, certain men devoting themselves to regularly reporting

certain courts. Thus we find in each court a regular succession of reporters down to the organisation of the Incorporated Council for Law Reporting. The last Reporter of this class was Mr. Beavan who reported the Rolls Court from 1838 to 1866, thus overlapping by a few months the Law Reports. Latterly it became the habit to have an authorisation or license signed by one or more judges prefixed to each report. Judges have not always desired reports, for instance, Lord Stowell the great Admiralty judge at first objected to the proceedings in his court being reported. In the early reports, great importance is always attached to the opinion of the Chief, their reverence being shown even in cases in which the great man was overruled by his associates. The older reporters sometime give us information as to the manner of the judges so that we learn that they sometimes departed from the calm, impersonal bearing which becomes the judge. We learn that in ancient times Judges could become angry at counsel and manifest irritation against them by the spoken word, things which the writer says are beyond the memory of the lawyer of the present day. We learn something about the personal vanity of Judges. Sometimes we are told of the motives actuating the court for instance Saunders after reporting an argument upon an important question tells us that the case was decided solely upon a point of pleading by the Justices but adds: "I believe the principal reason was because they would not determine the matter of law." Sometimes the reporters allow us to perceive their own estimation of particular judges and their rulings. If the reporter's opinion of certain judges is sometimes slighting, we have, even in modern times cases in which the expressions of the judges themselves seem severe if not unkind, toward their brethren. We find that reporters have often endeavoured to preserve or enhance their professional reputations by the careful manner in which they have reported their own arguments. Sir John Bridgeman is an instance in point. In one case he reports a judgment in his favour, he not being heard but adds "my intended argument was as follows," the intended argument covering 19 pages. Judge reporters are not behind lawyer reporters in looking after themselves. Kirby's reports which appeared in 1789 are the first reports published in America. The reporting system in America was originally the voluntary or independent system as in England; but reporting has been for a long time now confined to a state official and has become purely mechanical the condition he says is due very largely to two reasons (1) because the reporter does not as a rule hear the cases argued (2) because of the desire to publish every judgment of the court of last resort. It were well the writer thinks that the reporter exercised some

discretion in reporting, provided of course the reporter is a good lawyer.

The Westminister Hall has inspired a writer in the *American Law Review* to write on the administration of justice in that hall from the earliest times till the transfer of Law courts to the new buildings in 1883. It joins together two great ages in the history of English law—the ancient and the modern. So different are the characteristics that they appear to be systems of two fundamentally different races, rather than a development of the law governing the same nation. When the Westminister Hall was first erected, we see lingering characteristics of the blood feud and weregild. The punishment of the criminal was left not to any Royal Court of Justice but to the victims' kindred or to the Hundred's court. There were no indictments, no presentments, no juries, no body of trained lawyers. If a man was caught red handed, he was punished. If he was not the only method of punishing him was by the results of an ordeal (an ordeal of fire or water.) The Latern Council in 1215 forbade the clergy to take part in these ordeals. As a result, ordeals disappeared from English Law as a mode of trial. If the accused got men of the neighbourhood to swear that he was not guilty, he would be let off and he had not to undergo the trial. With William the conqueror, another test, the trial by battle was introduced into England which after a chequered career was finally abolished in 1818. The first great impetus to the development of common law came in the reign of Henry II. The establishment of the *Curia Regis*,by the substitution of one national court for a dozen petty courts exercised a potent influence in developing the law. Glanville wrote his book on the practice of the King's Court. But the greatest book to the lawyer is Bracton's who was a clergyman and a judge under Henry III. Besides his treatise on the Law and Customs of England, we have also a note book of his wherein he recorded about 2000 cases decided by two Eminent Judges of his day.—Martin of Pateshull and William of Raleigh. Bracton died in 1268. Edward I's reign marks one of the most brilliant periods of English law. We now begin to get, for the first time, glimpses of a body of professional lawyers and reports of cases for the first time appear. An unknown lawyer set down on parchment matters of interest to the lawyer in the proceedings of the court such as statements of counsel and judges as they took place in the court before his eyes. This was in 1285 but the regular reports commence from 1293 and go on in almost unbroken sequence to 1532. These are the Year Books. For sometime it was thought that these reporters were official reporters

but judging from their contents, it seems impossible any longer to maintain this view. These Year Books though for the most part uninteresting, do contain human elements of interest. Therein are recorded the brutal remarks by judges to the bar, such delightful specimens as "leave off your noise, we forbid you to speak further of that averment on pain of suspension." "For shame" "you talk at random," wrangles between judges, exclamations of joy at the rulings a lawyer exclaiming "blessed is the womb that bare them," occasional sarcastic remarks from the bar also; not unusually of judges as litigants. To the student of the history of law, these Year Books are a mine of information. They show the law in the making, though the complicated procedure of the time makes them positively uninteresting. They show how at one time, the forms of action were all; in the absence of a form of action, there was no remedy in law—how the Chancery courts used to issue writs to remedy the defects, how if you adopted the wrong writ, you lost your case, how and when parol contracts came to be enforced, when the epoch-making writ of assumpsit was introduced. During the period covered by the Year Books, the two most famous law books compiled are those of Fortescue and Littleton. During this period, we have an instance of a highway man turning a new leaf, becoming Attorney-General and finally Chief Justice. Bacon and Coke were the next two great names. In point of interest, probably the greatest trial that took place in that hall was the famous Ship money case in the reign of Charles I; St. John's argument is said to have been the finest ever delivered in Westminister Hall. Passing hurriedly over the names of other judges and lawyers, *e. g.* Hale, the author of Pleas of the Crown, Nottingham who brought order out of chaos in the field of equity jurisprudence, Saunders who notwithstanding his drunkenness, was a great master of common law pleading, Jeffreys who in spite of his reputation, seems to have been good a lawyer, Pemberton who learnt law during his imprisonment, Somers, Holt the celebrated Chief Justice who decided *Coggs* v. *Bernard*, we come to the Earl of Mansfield who is reckoned as the greatest of Chief Justices. No bill of exceptions was ever tendered to his rulings during the thirty three years he sat on the Bench. But two of his judgments were reversed. His decisions were made generally at the conclusion of the arguments. He expanded the action of *indebitatus assumpsit* so that it embraced nearly every sort of pecuniary obligation. During this time, we see two great forces in motion which aimed at the reformation of law, represented by Bentham and Blackstone. Lord Eldon was against reform; nevertheless his contri-

butions to the development of equity jurisprudence are invaluable. Westminister Hall witnessed the trial of Warren Hastings. In 1825, it was the scene of another trial—viz. that of Queen Caroline. Then we have the great names of the 19th century. Jessel was once asked whom he regarded as the greatest Equity judge. He promptly replied that he placed Lord Hardwicke first, Lord Cairns second, himself the third and his conclusion seems right. As an illustration of the changes that the hall has witnessed may be cited the fact that Walter Map the celebrated writer and judge in the reign of Henry II insisted on excepting from his oath to do justice to all men "Jews and White Monks"and yet seven centuries after in the last days of Westminister Hall, we find Jessel himself a Jew holding the high position of Master of the Rolls and delivering those wonderfully luminous opinions which won from Gladstone the tribute that he possessed the greatest legal mind of the age.

Mr. Oswald Dylles makes a comparative study of the law of homicide according to the various systems of jurisprudence. The widest definition of murder is that given by the Scotch and the English Laws and the only punishment which can be inflicted for the offence under those systems is death. The result is that juries are always loath to convict a prisoner of murder. With the exception of Italy, Holland, Portugal and certain Swiss cantons, the States of Europe retain death penalty in their laws but they carefully narrow the definition of the offence, for which death penalty is to be inflicted. In the French Code, death penalty is to be inflicted in four aggravated forms of murder viz. " assassination" (murder upon design and premeditation), parricide *i. e.* murder of father, mother or other ascendants, infanticide and poisoning and in addition when the murder accompanies, precedes or follows another crime or is committed with a view to facilitate the perpetration of another crime as for the escape or harbouring of a criminal. Even in these cases it is open to the jury to find extenuating circumstances which will reduce death penalty to a life sentence. In other cases of intentional killing the penalty is penal servitude for life which also is liable to be reduced to a short term of imprisonment if extenuating circumstances are found by the jury.

The German Code 1872 distinguishes clearly among crimes of homicide according to the presence or absence of intention to kill, and if there is the intention to kill whether the offence is premeditated or not. It is only intentional killing with premeditation that is punishable with death. For un premeditated homicide the punishment is penal servitude which is liable to be reduced to a term of

imprisonment varying from 6 months to 5 years if the judge finds extenuating circumstances to exist. Unlike in the system unpremeditated homicide is aggravated by its being committed in the perpetration of a crime etc., and also by its being committed upon an ascendant; but these aggravating circumstances do not make the offence capital. Homicide in the course of duelling is only punishable by detention in a fortress, unless there is a premeditated violation of the rules of duelling. The principles of the classification of these codes run through all the other continental codes. The heaviest penalty is reserved for premeditated murder and for paricide in the laws of Hungary, Spain, Belgium and Denmark. Each State in the American Union has a penal code of its own. Some systems follow the English Law but most follow the continental model. They reserve extreme penalty for premeditated murder and murder in the perpetration of crimes etc. The existence of consanguinity between the slayer and the killed is not an element of aggravation. Homicide with intention to kill but not premeditated is murder in the second degree. Lesser forms of culpable homicide are called by the English term manslaughter and are carefully distinguished aud classified, one state recognising four different kinds of manslaughter. In Georgia which adopts the English definition nevertheless gives the Jury power to reduce the sentence.

A writer in *the Law student's journal* (August No. 1), while discussing the maxim *actio personalis moritur cumpersona* points out the distinction between cases where there is a cause of action independently of the wrong causing the death and cases where the wrong causing the death is the cause of action; in the former case, the damage arising from the death may be included as an element of damage. For instance in *Jackson* v. *Watson*[1], Vaughan *Williams* L. J. allowed a husband damages for funeral expenses and loss of services due to the death of his wife caused by her eating tinned salmon supplied by the defendant which was unfit for consumption; *Bradshaw* v. *The Lancashire and Yorkshire Railway Company*[2] is also to the same effect.

BOOK REVIEWS.

The Law Reports of British India, by M. Subrahmaniam B.A. B. L. and M. V. Krishnaswamy, B. A., B. L., High Court Vakils. I. L. R.) Calcutta Vol. I. (Vols. 1-3.

1. (1909) 2 K. B. 193. 2. 10 C. P. 189.

There are features about this reprint of the Indian Law Reports which must make it specially welcome to the profession. It was a happy idea of the Editors of the Indian Reports (Moore's Indian Appeals) to append notes to every case appearing therein indicating on what points the principal case has been followed, distinguished, or referred to. This tradition has been well kept up, for the matter of that has been improved upon in the present series. It is not much good giving pellmell cases in which a case has been followed, distinguished &c., without stating on what points it has been so followed or distinguished especially when the case is one that involves more than one point. The Editors of this series, we are glad to note, have carefully analysed the points each case decides and noted under each point the appropriate cases with a shortnote of the facts wherever necessary. Whenever a case has become obsolete either by reason of subsequent legislation, or by the decision of a higher authority, that circumstance has been clearly indicated. In cases where the decision turns upon the construction of any Act, or Regulation, the Section of the Act or Regulation is set out in full in the footnotes. This is a practice which has much to commend it and may well be adopted by reporters of all legal journals in this country. While retaining the text of the I L. R. Series in tact, whenever either the statement of facts, or the head note or the report of the case appeared inaccurate or not sufficiently full, the defect is made up in the notes. Comments on passages in the judgment the made in other cases are noted as footnotes. Authorities *in pari materia* are cited. Even passages from text books bearing on the points decided are given. With an annotated edition of the Law Reports like the present one may fairly dispense with digests and indexes. The index is full and notices points decided though not noted in the headnote. Altogether, this Edition supplies a real desideratum and if the Editors keep up to the expectations which the present volume legitimately raises, they shall have deserved well of the profession. The printing and binding leave little to be desired and the edition is free from printer's errors, an exceptional feature in Indian publications.

The Indian Decisions (*New Series*) Vol. II and III by. T. A. Venkasamy Rao and T. S. Krishnasawmy Row. With a diligence, much to be commended, the Editors have brought up their Series to 7 Calcutta and we are glad to note that the Volumes fully keep up to the standard of finish exhibited by the previous volumes.

All India Century Digest (*Civil*) 1811—1912 Vols. 1 to 9 by Mr. B. R. Desai, High Court Pleader, Baroda. Mr. Desai is not a person unknown to the profession. His Index of cases judicially noticed has already become an indispensable book to the profession. Although we have an objection to the method of Mr. Desai dispensing with the facts of cases which follow a case (involving as it does often times of looking up cases which have no bearing on the point as they follow the principal case only on other points) on the whole, the book is satisfactory. The arrangement and distribution of topics and the mode of indicating cross-references seem to be ideal. But one has always a feeling that all the cases that ought to have been brought under a particular heading have not been so brought. We are glad to say however, that except in a few instances, we have been able to get all the cases that a digest may reasonably be expected to give by using the cross references. It is of course too much to expect a digest maker to give references for points which the head note writer does not notice. The cases of 1912 have not all been digested; that of course is only natural and cannot be counted against the editor, We hope that the defect will be made up by a supplemental volume The vice of giving references only to non-official reports when the same cases are also reported in the official is not confined to digest makers and we need not hold Mr. Desai specially accountable for it. The volumes are handy, the printing is good and subject to the reservations we have indicated above we do not feel much hesitation in recommending these volumes to the profession.